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**DOING
BUSINESS
IN PERU**

**2022
2023**

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OVERVIEW: THE GENERAL BUSINESS, ECONOMIC AND CULTURAL CLIMATE IN PERÚ

*Economy

Peru is an attractive country for inwards investment. Peru has a modern capitalist economy with free competition and policies against price controls and monopolies. 80% of all Peruvian investment is driven by the private business sector. Private property is fully guaranteed, and expropriations are only allowed after compensation, and in cases of national security or in the public interest. Foreign and domestic investors have the same rights and duties. Foreign investors can freely remit foreign currency abroad, are guaranteed access to local sources of credit and can sign stability agreements (see Question 7). There is no discrimination as to foreign investors with respect to prices, tariffs, fees, taxes or exchange rates.

The Central Reserve Bank is responsible for public finances, and is independent.

*Dominant Industries

Peru is the second-largest exporter of copper in Latin America. Peruvian agriculture exports are also economically important.

*Population and Language

Peru has 33 million inhabitants. The official language is Spanish.

*Business Culture

Peruvian businesspeople are familiar with global business etiquette.

*Other

Although the COVID-19 pandemic has led to the suspension of some economic activities, economic recovery is expected in the last quarter of 2021.

KEY RECENT EVENTS AFFECTING DOING BUSINESS IN PERÚ

Key Business and Economic Events

The Peruvian economy has grown steadily over the past two decades, with an average growth rate of 5.9%, despite the global financial crisis in 2008 that affected many countries with negative growth rates. Peru's growth had its peak in 2008 when the economy grew by 9.8%, the highest growth rate in 14 years, and also the highest in the Latin American region. Peru's economic success is due to major legal reforms made in the 1990s, where a free-market economy was introduced to replace state intervention in the economy.

Political Events

Pedro Castillo, a member of the left-wing Free Peru party, was inaugurated as president on 28 July 2021. However, the political opposition is gaining control of Peru's Congress. The Congress is composed of more than seven parties from different tendencies and is looking to agree on measures to conduct the country in benefit of all electors.

New Legislation

A number of areas have been reformed to promote investment in strategic sectors such as oil and gas, energy, telecommunications, and water and sewerage, which were previously reserved for state ownership and/or management.

In March 2016, Peru officially acceded to the Recommendation of the Council on the Principles of Public Governance of Public-Private Partnerships of the OECD, and a series of related regulations have been published by the Government of Peru.

Legal System

Peru has a civil law system.

FOREIGN INVESTMENT

Restrictions on foreign investment, ownership or control in Perú

-Government Authorisations

Unless authorised by the government, foreign investors cannot acquire or possess the following within 50 kilometres of the Peruvian border (Article 71, Peruvian Constitution):

- Mines.
- Land.
- Forests.
- Water.
- Fuel and energy sources.

-Restrictions on Foreign Shareholders

There are no restrictions on foreign parties acquiring shares in Peruvian companies. Certain sectors have rules on foreign parties' ownership based on protection of the country's autonomy (such as media, maritime and airlines).

-Restrictions on Acquisition of Shares

See above, Restrictions on Foreign Shareholders.

-Specific Industries

See above, Restrictions on Foreign Shareholders.

*There are no specific trading and monetary restrictions on doing business with certain countries or jurisdictions.

*There are no exchange control or currency regulations.

Certain activities must be registered with the Financial Intelligence Unit (UIF) for anti-money-laundering purposes.

INCENTIVES ARE AVAILABLE TO INVESTORS

Grants

There are no specific grants available for investors, only tax incentives.

Incentives

Investors can benefit from a number of tax incentives, including:

- **Regions With Special Tax Regimes.** For example, companies located in the Peruvian Amazon region benefit from lower tax rates for special activities in that area.
- **Value Added Tax (VAT) Anticipated Recovery Regime.** This regime grants the right to recover VAT paid on the import and/or local acquisition of goods, services or construction contracts in the pre-productive stage of a project.
- **Special Development Zones (ZEDs).** ZEDs are centres for export, transformation, industry, commercialisation and services that provide tax benefits for certain authorised activities.
- **Special Regime for the Amazonian Region.** There are tax incentives for taxpayers based in the Peruvian Amazonian Region for companies whose principal activities are in certain sectors.
- **Special Regime for Agriculture.** This includes a decrease of income tax rates and special depreciation rate (20%) for hydraulic and irrigation works investments.
- **Special Depreciation for Mining Companies.** Mining companies benefit from a depreciation rate of 20%.
- **Tax Stability Agreements.** Investors and companies receiving investment can enter into an agreement with the state to guarantee that the basic rules (including certain tax rules) in force at the moment of the subscription will be frozen for a reasonable term.

-Foreign Investors

Foreign investors benefit from the same grants and incentives as Peruvian nationals.

BUSINESS VEHICLES

The most common forms of business vehicle used in your Perú

Main Business Vehicles

The main business vehicles used in Peru are the:

- Closely held company (Sociedad Anónima Cerrada).
- Limited Liability Company (Sociedad de Responsabilidad Limitada) (SRL).

Trusts are available in Peru.

Foreign Companies

Most foreign investors use a company (Sociedad Anónima), as the liability of its shareholders is limited to the amount contributed to the company. US investors sometimes use the SRL for US tax purposes.

Peruvian companies are governed by the General Law of Companies (Ley General de Sociedades) (LGS).

Peruvian companies must have a board of directors, except for closely held companies, which can choose to not have a board of directors.

A company with a board of directors must have a minimum of three directors. There are no nationality or residency requirements for directors. The management of the day-to-day operations of a company is entrusted to a general manager, who is appointed by the board of directors.

Closely held companies with no board of directors are managed by a general manager.

A general manager can be a company, which must then designate an individual to represent it as general manager.

The main formation, registration and reporting requirements for the most common corporate business vehicle used by foreign companies in Perú

REGISTRATION AND FORMATION

A company must be incorporated by at least two shareholders. If one of the shareholders is a foreign company, all of the following must be complied with:

- An individual must be given powers to incorporate the new company and draft the articles of incorporation and bye-laws.
- A certificate of incumbency must be issued by the corporate shareholder, stating that the person who granted the power of attorney on its behalf is acting within the scope of their authority.
- A certificate of good standing must be provided certifying the existence and good standing of the corporate shareholder.

These documents must be executed in all of the following ways:

- Apostilled or legalised by the competent authorities of the place(s) where they are granted/issued and by the Peruvian Consulate of the jurisdiction(s).
- Officially translated into Spanish.
- Certified by the Peruvian Ministry of Foreign Affairs.
- Recorded in the local Public Registry.

The public deed of incorporation may set out that the company will commence operations as of the date of issuance of the public deed. If so, while the company will not yet be officially registered, it will be allowed to begin operations as of that date. If the company is then ultimately not incorporated, its shareholders and promoters, as well as its directors and managers, are liable for all acts carried out on its behalf. The incorporation must be filed with the Public Registry.

REPORTING REQUIREMENTS

Companies listed on the Lima Stock Exchange must file their financial statements and any other material information with the Superintendence of Capital Markets (Superintendencia de Mercado de Valores) and the Lima Stock Exchange. These financial statements must be available to the public.

Certain acts must be recorded with the Public Registry to be valid, such as:

- Incorporation documents.
- Details of any merger, spin-off, restructuring or liquidation.
- Details of subsidiaries and branches that are set up.
- Any powers of attorney.
- Amendments to the company bye-laws.

SHARE CAPITAL

The General Law of Companies (LGS) does not specify a general minimum share capital requirement to incorporate a company. However, Peruvian banks sometimes do not accept capital deposits for new companies of less than approximately PEN4,300.

In addition, some companies (such as financial institutions or brokers) must meet minimum share capital requirements.

Non-Cash Consideration

Companies can issue shares in exchange for goods and credit. A public deed must show the non-cash contribution and include a valuation report stating the following information:

- A description of the consideration.
- The criteria used for valuation of the goods.
- The assessed value of the consideration.

Rights Attaching to Shares

Restrictions on Rights Attaching to Shares. The only restriction on rights attaching to shares is that they must not be against the public order.

Automatic Rights Attaching to Shares. Voting shares grant their holders at least the right to:

- Vote in the shareholders' meetings.

- Supervise the companies' management.
- Have access to non-confidential company information.
- Withdraw from the company on its approval of certain actions (for example, mergers, spin-offs or changes of business purpose).
- Participate in the distribution of profits.
- Participate in the net profit resulting from a liquidation proceeding.
- Buy into any future issue of shares before the shares are made available to the general public.

Non-voting shares grant their holders at least the right to:

- Be informed at least every six months about the activities and the management of the company.
- Oppose resolutions that violate their rights.
- Withdraw from the company on the occurrence of certain events set out by the law and the bye-laws of the company.
- Preferred participation in the distribution of profits, as set out in the bye-laws of the company.
- Preferred participation in the net profits resulting from a liquidation proceeding, as set out in the bye-laws of the company.
- Buy into any future issue of shares before the shares are made available to the general public.

Standard management structure and key liability issues for the most common form of corporate business vehicle used by foreign companies in your Perú

Management Structure

All companies are managed by their directors and managers, except for closely held companies that elect to be managed only by their managers.

Management Restrictions

There are no restrictions on the appointment of foreign managers. However, there are some limitations on their powers in relation to certain Peruvian entities, such as, for example the Peruvian Tax Agency (Superintendencia Nacional de Aduanas y de Administración Tributaria) (SUNAT), among others. Therefore, the appointment of a Peruvian proxy authorised to represent the company before such entities is recommended.

Directors' and Officers' Liability

Directors have unlimited joint and several liabilities to the company, shareholders and third parties for damages and injuries caused by actions that:

- Are contrary to Peruvian law.
- Are contrary to the company's bye-laws.
- Constitute wilful misconduct.
- Are beyond the scope of their authority.
- Are grossly negligent.

Officers are also liable for breaching their obligations under the General Law of Companies (LGS).

Parent Company Liability

The shareholders of a company are only liable for the debts of its subsidiaries up to the amount of their contributions.

Environment

The main environmental regulations and considerations that a business must take into account when setting up and doing business in Perú

Under the Environmental General Law (Law 28611), any productive or commercial activity that could cause environmental damage requires an environmental assessment approved by the relevant local environmental authority before the activity is started.

For certain activities considered to have a high environmental impact (such as large-scale mining or oil and gas exploitation) the assessment must be an Environmental Impact Study - detailed (EIA-d). For some other activities, the environmental studies are less rigorous. This is the case of the Environmental Impact Study - semi-detailed (EIA-sd) for moderate negative environmental impacts, and the Environmental Impact Declaration (DIA) for minor negative environmental impacts.

The EIA-d, EIA-sd and DIA all involve soliciting the opinion of the relevant local community.

EMPLOYMENT

Laws, Contracts and Permits

Main laws regulating employment relationships

Foreign Employees

The hiring of foreigner employees in Peru is regulated by the Foreign Employees Law (FEL) and its regulations. Foreigners cannot comprise more than 20% of all the employer's personnel, and their remuneration cannot exceed 30% of all the payroll of salaries and wages. However, employers can request an exemption for specific cases.

Labour agreements for foreign employees must be in writing and for fixed terms of up to three years, which are successively renewable for equal periods.

If the employment agreement is approved by the Labour Authority, the employee's immigration status can be changed from a tourist or business visa to a work visa before the Immigration Office. Once the work visa is granted, a Foreign Card can be granted and the employee can start rendering services to the local company.

Foreigners from Mercosur member countries are not subject to the FEL, and the General Labour Law applies instead.

Employees Working Abroad

Peruvian citizens working abroad are subject to the law expressly chosen by the parties. In the absence of any express choice of law, the employment is regulated by the law of the place where the employment is performed.

If the place of performance is not expressly determined or does not result unequivocally from the nature of the obligation, the law of the place of celebration of the agreement applies.

Mandatory Rules of Law

The Labour Productivity and Competitiveness Statute 1997 (1997 Statute) regulates the main aspects of the employment relationship, such as:

- Employee benefits.
- Labour agreement conditions.
- Special types of employees.
- Labour agreement termination.

All employment relationships in Peru are regulated by Peruvian law, irrespective of the employee's nationality and any choice of law in the contract.

Required contract of employment

Main Terms

Peruvian law regulates different types of employment agreements:

- Indeterminate-term employment agreement: does not need to be in writing.
- Fixed-term employment agreement: must be in writing and can be for up to five years, as long as it does not exceed the maximum terms established for the different kinds of fixed-term agreements. A fixed-term labour agreement also has some additional requirements that must be included in the agreement such as:
 - term and objective;

- reasons for hiring, such as replacement or emergency;
- the work specified;
- whether it is seasonal work.

This type of labour agreement should be the exception and not the norm.

- Part-time employment agreement (for less than four hours per day, or 24 hours per week): must be in writing. If the labour agreement is not in writing, it is deemed to be an indeterminate-term and full-time employment agreement.

Implied Terms

Some implied terms govern certain aspects of the employment relationship, including in relation to:

- Working hours.
- Job role.
- Social benefits.
- Trial period.
- Salary.
- Health and safety at work obligations.
- Data protection obligations.

Collective Agreements

Employees may benefit from the rights set out in collective agreements. These rights may stem from a majority union (where the collective agreement applies to all employees) or a minority union (where the benefits apply only to union affiliates).

Foreign employees requirements for work

Work Permits

The most common work visas are:

- Work visas for employees of a local company (resident or temporary employees).
- Work visas for detached employees of a foreign company who do not live permanently in Peru but are assigned to render services for a specific length of time.

Residency Permits

Residency permits can give either:

- Temporary status, giving permanency in Peru for less than 365 days.
- Residency status, giving permanency in Peru for more than a year.

Foreigners with three years or more of residency can apply for permanent immigration and can be hired as nationals.

Mercosur citizens can apply for a temporary residency for two years, and for a permanent residency before their temporary residency expires.

Termination and Redundancy

Employees are not entitled to be consulted on redundancies but must be consulted on business transfers.

Termination of an individual's employment regulated

Termination

Employees cannot be terminated at will or through unfair or arbitrary dismissal. After completing a trial period of three months (or six months, if the position of the employee is a position of trust, or one year if it is a managerial position), the employee can only be dismissed for fair reasons (such as a criminal conviction for fraud or other serious offences).

Fair Dismissal

Statutory Minimum Notice. The employer must provide the employee with the reasons for dismissal in writing and give at least six calendar days' notice for the employee to present a response. This notice period can be extended, except in cases of serious offences. During this period, the employer can release the employee of their work obligations by written notice but must pay the corresponding remuneration and labour benefits.

Severance Payment. There is no payment of an indemnity for dismissal for fair reason.

Unfair Dismissal

Grounds for Unfair Dismissal. Dismissals are unfair when not motivated by any of the fair reasons for justified dismissal established by law, or where the cause is not possible to prove. Dismissals are also unfair if made for a prohibited reason such as discrimination.

Remedies. Employees with indeterminate-term employment contracts who are unfairly dismissed can claim a legal indemnity equivalent to one and a half months' remuneration for each year of service.

Employees with fixed-term contracts can claim a legal indemnity equivalent to one and a half months' remuneration for each month of service outstanding under the expiration of the term of the agreement.

The legal indemnity is subject to a maximum of 12 months' pay.

Employees in a managerial position or position of trust who are unfairly dismissed only receive the legal indemnity and generally cannot claim for reinstatement. However, the Constitutional Court has sometimes enacted contrary resolutions.

Class of Individuals

Individuals enjoy protection from dismissal due to:

- Trade union membership.
- Trade union representative.
- The employee bringing an action against the employer.
- Pregnancy and related circumstances.
- Sex, race, religious or language discrimination.
- AIDS or a disability.

If a dismissal is void, an employee can claim reinstatement or the payment of the legal indemnity, in addition to claiming an indemnity for damages

1.Redundancies and mass termination regulated

Redundancies and Mass Termination

Mass layoffs can take place for the following reasons:

- Fortuitous event and force majeure.
- Economical, technological, structural or similar reasons.
- The company's dissolution, liquidation or bankruptcy.
- The company's reorganisation under the insolvency laws.

Procedural Requirements

During the procedure, the employer must continue to pay employees the monthly remuneration and benefits. In some cases, the procedure must be approved by the Labour Authority.

TAX

Taxes on Employment

Circumstances in which an employee is taxed in Perú

Tax Residence

Peruvian and foreign individuals qualify as tax resident if they have stayed in the country for more than 183 days in any 12-month period.

Other Methods to Determine Residency

Tax resident individuals are subject to tax on their worldwide income, while non-tax resident individuals are subject to tax only on their Peruvian-source income.

Income tax, social security and other tax or contributions that must be paid by the employee and the employer during the employment relationship

Tax Resident Employees

Income Tax. Income tax is levied at progressive cumulative rates on the employee's Peruvian net income plus any foreign-source income. The rates are as follows:

- Up to five tax units: 8%.
- Over five and up to 20 tax units: 14%.
- Over 20 and up to 35 tax units: 17%.
- Over 35 and up to 45 tax units: 20%.
- Over 45 tax units: 30%.

The value of the tax unit is defined for each fiscal year. For the 2020, fiscal year a tax unit is equivalent to PEN4,300.

To establish net labour income, a deduction of seven tax units is made from gross income. In addition, financial transactions tax and donations made in favour of national public entities or private non-profit associations or foundations (if qualified as such by tax authority) can be deducted from labour net income. This deduction has a limit of 10% of the total amount of labour income plus foreign-source income.

Employees can also annually deduct up to a maximum amount equal to three tax units as additional expenses, provided they correspond to certain expenses (such as the lease of real property in Peru or professional fees). For fiscal years 2021 and 2022, employees can also deduct certain expenses (such as artisan and tourism services).

Private or Public Pension. The private pension (AFP) contribution rate is approximately 12.8%, and the public pension (ONP) contribution rate is approximately 13%.

Non-tax Resident Employees

Non-tax resident employees must pay the following on their gross Peruvian-source income each month:

- Income tax. Withholding tax of 30% on gross income. No deductions are allowed.
- Private or public pension. The rates are the same as for tax resident employees.

Employers

Employers pay social security contributions to the Peruvian Social Health Insurance (EsSalud) at a rate of 9% on their employees' gross monthly salary.

Employers can provide private medical benefits to employees as an employment benefit. If so, the employer's contribution (9% on the employees' gross monthly salary) is divided as follows:

- 6.75% to EsSalud.
- 2.25% to the private health care entities.

Business Vehicles

When is a business vehicle subject to tax in your jurisdiction?

Tax Resident Business

Companies incorporated and other entities established in Peru are considered to be Peruvian resident for tax purposes.

All resident business entities are taxed on their worldwide income. As a general rule, all revenue obtained by a company from its business activities is taxable and falls into the category of trading and industry income. The applicable rate of taxation for this category is 29.5% (as of the 2017 fiscal year).

The following resident business entities are subject to the same tax treatment:

- Companies.
- Partnerships and any other vehicle used to conduct business.
- Resident partnerships.
- Limited liability companies.
- Taxable foundations and associations.
- Joint ventures with their own accounting independent of other ventures.

The taxable base for these entities is determined by taking their revenue and deducting all expenses allowed by law, depending on the rules applicable to each case.

Companies can deduct from their gross income all expenses incurred to produce income and/or maintain its source, provided that certain conditions are met and the deduction is not expressly forbidden by law.

The following expenses cannot be deducted from gross income:

- Personal expenses.
- Income taxes.
- Fines and any other tax sanctions.
- Certain donations.
- Amounts invested in the acquisition of goods or permanent improvements.
- Provisions or reserves (if not permitted by law).
- Depreciation of intellectual property, except for those with a limited life.
- Commissions originating abroad for the purchase or sale of goods, for the amount that exceeds the amount normally paid in the original country.

Non-Tax Resident Business

Non-tax resident companies must pay withholding tax on their Peruvian-source income. The effective tax rate varies depending on the nature of the income. The corresponding withholding tax rates on the net income are as follows:

- 5% (as of the 2017 fiscal year) for dividends paid to non-resident business entities and individuals. Dividends payable to resident business entities are tax-exempt until they are subsequently distributed to individuals (resident or non-resident) or non-resident business entities.
- 4.99% for interests from financing granted by non-resident business entities, provided several requirements are met, otherwise a rate of 30% will apply. For the lower 4.99% rate to apply, parties cannot be related.
- 4.99% for the interest payable to non-resident entities by banks, financial and other multiple operational entities, as a result of the utilisation in Peru of their credit lines abroad.

The main taxes that potentially apply to a business vehicle subject to tax in Perú

Income Tax

Tax resident business vehicles are taxed at the rate of 29.5% (as of the 2017 fiscal year) on their corporate worldwide net income (plus their foreign-source income if applicable).

Permanent establishments (PE) and branches of non-resident entities of any nature are considered to be business vehicles, which are taxed only on their Peruvian-source income (under the territoriality principle).

If a non-domiciled client has a permanent establishment in Peru, the permanent establishment is considered to be a domiciled entity for Peruvian tax and is subject to income tax on the Peruvian-source income attributable to it, as well as to all the formal and substantive obligations established in the Peruvian tax legislation.

VAT

VAT must be paid at the rate of 18% on the value of:

- The sale of goods in Peru.
- Services provided in Peru (paid by the service provider).
- Services provided from abroad and used in Peru (paid by the user of the service).
- Construction contracts.
- The first sale of real estate property made by the constructor.
- Imported goods.

Excise Tax

Excise tax must be paid on the sale of goods, such as:

- Tobacco.
- Alcoholic beverages.
- Soft drinks.
- Vehicles.
- Fuel.
- Gambling, including lottery games, raffles, casino games and slot machines.

Temporary Tax on Net Assets

Temporary tax on net assets is payable, at the following rates, on the value of an entity's net assets at the end of the previous fiscal year (31 December):

- If the amount of the net assets is up to PEN1 million: 0%.
- If the amount of the net assets is over PEN1 million: 0.4%.

The tax paid can be credited against the income tax payments.

Financial Transactions Tax

This tax is payable on certain transactions made through the Peruvian banking system. Currently, the rate is 0.005% per transaction.

Real Estate Property Tax

Real estate property tax is a local tax applied on the total value of the real estate declared by the owner. The tax rate depends on the total value of the property as follows:

- Up to 15 tax units: 0.2%.
- Over 15 and up to 60 tax units: 0.6%.
- Over 60 tax units: 1%.

The value of the tax unit is defined for each fiscal year. For the 2020 fiscal year, a tax unit is equivalent to PEN4,300.

DIVIDENDS, INTEREST AND IP ROYALTIES

Dividends Paid

Withholding tax must be paid at 5% (as of the 2018 fiscal year).

Dividends Received

Dividends received by a resident company from a foreign company are included when calculating foreign-source income (see Question 20).

Interest Paid

Interest paid to foreign corporate shareholders and other related parties is subject to a withholding tax at 30%. Tax treaties with Canada, Chile, México, Korea and Brazil limit this rate to 15%, and tax treaties with Switzerland and Portugal limit this rate to 10% or 15%.

IP Royalties Paid

IP royalties paid to foreign corporate shareholders are subject to a withholding tax of 30%. Tax treaties with Canada, Chile, Mexico and Brazil limit this rate to 15%, and tax treaties with Switzerland, Portugal and Korea limit this rate to 10% or 15%.

Groups, Affiliates and Related parties

Capitalisation rules (restrictions on loans from foreign affiliates)

Interest on loans from related and unrelated parties can be deducted from the gross income of a tax resident company, provided the amount of indebtedness does not exceed three times the taxpayer's net worth. The corresponding portion of interest in excess of this limit is not deductible. Non-deductible interests are not considered as dividends.

Interest on loans from related and unrelated parties is deducted from the gross income of a tax resident company, if the amount of indebtedness does not exceed 30% of Earnings Before Interest, Taxes, Depreciation, and Amortisation (EBITDA) of the previous fiscal year. The corresponding portion of interest in excess of this limit is deductible over the following four fiscal years, provided several requirements are met (these requirements have not yet been finalised in legislation).

Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Legislative Decree No 1120 was published on 18 July 2012 and introduced the controlled foreign company (CFC) rules. These rules took effect on 1 January 2013.

The CFC regime applies to passive income obtained by non-domiciled entities that qualify as CFCs, as defined in the Income Tax Law. The regime applies to incomes derived through CFCs from taxpayers domiciled in Peru.

Tax law qualifies entities as CFCs if they fulfil the following requirements:

- The entity has a different legal identity from its shareholders.
- The entity was established, incorporated or is domiciled in a country:
 - qualified as non-cooperative or a tax haven; or
 - in which a taxpayer's passive income are not levied with income tax or the applicable tax rate is less than or equal to 75% of the tax rate that would apply to income of the same nature in Peru.
- The entity's owner is domiciled in Peru when, at the closing of the taxable year, the taxpayer (by itself or together with its related parties domiciled in Peru), has a direct or indirect participation of more than 50% of the equity or of the voting rights of the company.

The Income Tax Law defines passive income as profits, interest, royalties, capital gains and capital income, with certain exclusions.

Transfer pricing rules

There are special transfer pricing rules for transactions involving related parties or those that are executed to, from, or through non-cooperative countries or tax havens, where values assigned by the parties reduce the tax payable in Peru.

The market price of a transaction may be adjusted to reflect its arm's-length value. This is determined by one of the following methods:

- The compared uncontrolled price method.
- The resale price method.
- The cost plus method.
- The profit split method.
- The residual profit split method.
- The transactional net margin method.

Under Peru's transfer pricing rules, entities must comply with formal obligations relating to the annual filing of tax affidavits. This can include the filing of a local report, a master file and/or a country-by-country report, depending on whether the entity belongs to a group (either a local or a multinational group). Entities must also keep a record of the related supporting documentation.

However, services rendered between related parties are deemed to be deductible expenses if they meet the "benefit test". This means that the services must provide commercial or economic value to the service user by enhancing or maintaining its commercial position.

The costs or expenses are determined by the sum of all the costs and expenses incurred by the service provider and a mark-up. In the case of low value-adding services, this mark-up cannot exceed 5%. Low value-adding services are deemed as those that:

- Have a supportive nature.
- Are not part of the core business of the taxpayer or its multinational group.
- Do not require or generate unique and valuable intangibles.
- Do not involve assuming or controlling a high or significant risk nor generate a high or significant risk for the service provider.

CUSTOMS DUTIES

Imports and exports taxes

Imports

Imports are subject to ad valorem duties (based on the value of the merchandise). Applicable rates vary depending on:

- The type of goods imported.
- Whether a bilateral agreement applies.

Imports may also be subject to VAT and excise tax (see Question 21).

Exports

Exports are not subject to VAT or excise tax.

Double Tax Treaties

Peru has signed double tax treaties with:

- Canada, Chile, Brazil, Switzerland, Mexico, South Korea and Portugal, which follow the OECD model.
- The Andean Community (Bolivia, Colombia and Ecuador).
- Peru has recently subscribed to a double tax treaty with Japan, but it is not yet in force. Negotiations are currently ongoing with Sweden, Italy, Thailand, France and the UK.

COMPETITION

Restrictive agreements and practices regulated by competition law

Restrictive Agreements and Practices

The competition authority is the National Institute for the Defence of Free Competition and the Protection of Intellectual Property (INDECOPi). Legislative Decree No 1034 regulates competition. Certain practices and agreements are considered to be infringements of the economic order, such as:

- **Horizontal Collusive Practices.** For example:
 - the fixing of prices and production conditions;
 - supply, demand and marketing agreements by companies that are current or potential competitors;
 - agreements to restrict production, distribution and technical or technological development;
 - agreements that seek to apportion markets or the assignment of production markets;
 - concerted discrimination in prices or terms;
 - the use of tying clauses and fixing of prices, or of other commercial or service conditions.
 - exclusivity distribution or sales agreements;
 - agreement or co-ordination of bids, positions or proposals or abstention in public or private tenders, contests or auctions or other forms of public procurement or acquisitions;
 - other practices of equivalent effect that seek to obtain benefits for reasons other than greater economic efficiency.

INDECOPi may sanction a horizontal agreement as illegal, if all of the following apply:

- the agreement is between competitors, at least one of which is in a dominant position;
 - the agreement is not complementary or accessory to other legal agreements;
 - the agreement fixes prices or other commercial conditions, limits production or sales, divides the market (clients, suppliers or geographical zones) or affects tendering, public contracting, acquisitions or public auctions.
- **Vertical Collusive Practices.** For example:
 - non-competition clauses according to price, production, quality and geographical area;
 - tying clauses that tie the sale of a product to the sale of an additional, unrelated product;
 - exclusivity agreements for distribution and sale of determined products to the same buyer for resale or redistribution.

INDECOPi applies the "rule of reason" to analyse whether the advantages obtained by a company in the market are achieved fairly or are the result of illegal practices.

Unilateral Conduct

A monopoly or dominant position can exist on a market without committing a violation, as long as there is no abusive conduct. Unilateral abusive conduct can include illegally restricting competition, obtaining benefits and causing real or potential harm to direct or indirect competitors.

Mergers and acquisitions subject to merger control

Transactions Subject to Merger Control

The Companies' Merger Control Proceedings are established in Law No 31112 and regulated by Supreme Decree No 39-2021-PCM. The Antitrust Commission (CLS) of INDECOPI has also issued Merger Control Guidelines.

A deal may be subject to merger control if it involves a transfer or change of control of all or part of a company. Merger control applies to:

- Concentrations of companies that reach the regulated thresholds, including foreign concentrations related (directly or indirectly) to economic agents that develop economic activities within Peru.
- Economic agents that offer goods and/or services on the Peruvian market and that execute concentration transactions that may produce or certainly trigger anti-competitive effects within all or part of Peru.

Concentrations can include, among other things:

- Corporate mergers and acquisitions.
- The buying and selling of rights and assets.
- The establishment of full function joint ventures (an autonomy entity with all the features and functions of a third company).

The law establishes two simultaneous thresholds that the relevant economic agents and their corresponding economic groups must fulfil. Therefore, not every transaction is subject to notification and control by INDECOPI. A concentration transaction must be submitted to INDECOPI for prior control if it meets both the following thresholds:

- The total sum of the value of the sales or the annual revenues or the assets' value (within Peru) of the economic agents involved in the concentration transaction reaches or exceeds 118,000 tax units or more during the previous tax year.
- The value of the sales or the annual revenues or the assets' value (within Peru) of two or more economic agents involved in the concentration transaction separately reaches 18,000 tax units or more during the previous tax year.

INDECOPI can review transactions until one year after its conclusion, including where transactions do not reach the minimum thresholds.

Foreign-to-Foreign Acquisitions

Foreign-to-foreign acquisitions are not subject of merger control unless there is a geographical relationship with Peru.

SPECIFIC INDUSTRIES

The legal framework is relevant to any transaction, regardless of industry type.

Anti-Bribery and Corruption

Anti-bribery or corruption regulations affecting business in Perú

Acts of corruption are regulated in the Peruvian Criminal Code and include among other things:

- Simple and aggravated collusion.
- Passive proper bribery and other types of passive bribery.
- Active bribery.
- Influence peddling.

Any payment, gift, exchange or other benefit given to a public official may be considered to be an act of bribery.

Law No 30424 regulates the administrative liability of legal entities. A legal entity can be investigated, prosecuted and sanctioned separately and independently to any criminal prosecution against its representatives, officers, executives and/or employees for the commission of certain crimes listed in Law No 30424, including acts of corruption.

Legal entities may be exempt from liability if they have implemented a suitable corruption prevention system. Therefore, even if the prevention system is not mandatory, failing to implement it can give rise to liability for the legal entity.

The main IP rights that are recognised in Perú

Patents

Definition and Legal Requirements. To be patentable, an invention must:

- Be novel.
- Involve an inventive step.
- Be capable of industrial application.

The patent owner can prevent unauthorised third parties from making, selling, offering for sale, using, or importing for these purposes the patented product or process. The owner of a patent, or of a patent application that is being processed, can license third parties to exploit the invention it covers.

Registration. A patent must be registered at the Peruvian Inventions and New Technologies Office in the National Institute for the Protection of Free Competition and Intellectual Property (INDECOP) to be protected. The INDECOP website provides guidance for the application procedure (www.indecopi.gob.pe).

Enforcement and Remedies. The patent owner can take legal action for unauthorised use of the invention and can request, for example:

- The cessation of all infringing acts.
- Withdrawal of all infringing products from the market.
- A prohibition of the import or export of the infringing products.
- Destruction of the products, or the temporary or permanent closure of the business.
- Publication of the guilty verdict and notification of interested parties at the infringer's expense.

Length of Protection. Protection lasts for 20 years from registration. After this period the patent enters the public domain.

Trade Marks

Definition and Legal Requirements. A trade mark is a sign that is used to identify products or services in the market. To qualify as a trade mark, a mark must be both:

- Sufficiently perceptible and distinctive to differentiate the goods or services of one person from those of another.
- Capable of graphic representation.
-

The owner of a registered trade mark has the exclusive right to prevent all unauthorised parties from:

- Using or affixing the trade mark, or a similar or identical distinguishing sign, to certain products.
- Removing or changing the trade mark once it has been attached to a product.
- Manufacturing, selling or storing materials that reproduce or contain the trade mark.
- Using the trade mark or a similar or identical sign in the course of trade where it would result in the likelihood of confusion or mistaken association with the registered owner, or damage the owner's economic or commercial interests.
- Publicising the use of the trade mark or a similar or identical distinguishing sign where it could weaken the distinctiveness or value of the trade mark for commercial or advertising purposes, or take unfair advantage of its prestige.

Protection. The protection of a trade mark is subject to its registration with the Peruvian Trademark Office in the INDECOP. The INDECOP website provides guidance on the application procedure (www.indecopi.gob.pe).

Enforcement and Remedies. The trade mark owner can take legal action against third parties for the unauthorised use of their registered trade marks and can request, for example:

- The cessation of all infringing acts.
- Withdrawal of all infringing products from the market.
- A prohibition against import or export of the infringing products.
- Destruction of the products, or the temporary or permanent closure of the infringing business.

- Publication of the guilty verdict and notification of interested parties at the infringer's expense.

A registered trade mark owner can also prevent third parties registering trade marks and logos with similar characteristics to the ones they own by filing opposition against such trade mark applications.

Length of Protection and Renewability. Protection lasts for ten years and can be renewed indefinitely for additional ten-year periods.

Registered Designs

Definition and Legal Requirements. An industrial design is the particular appearance of a product resulting from any combination of lines or colours, or any dimensional or three-dimensional outward form, line, contour, form, texture or materials, that does not change the use or purpose of the product.

Only industrial designs considered as being new worldwide and not just in Peru are subject to registration.

Registration. Industrial designs are registered with the INDECOPI. The website provides information about the application procedure (www.indecopi.gob.pe).

Enforcement and Remedies. An industrial design registration grants its owner the exclusive right to exclude any third party from using the registered design. Therefore, the owner of a registered design can take legal action against third parties.

Length of Protection and Renewability. Protection lasts for ten years.

Unregistered Designs

Definition and Legal Requirements. Unregistered designs do not have specific protection under Peruvian law.

Enforcement and Remedies. In some circumstances, it may be possible to file an unfair trading action by alleging that a third party is unfairly using the unregistered design without authorisation.

Length of Protection. Unregistered designs are not themselves protected.

Copyright

Definition and Legal Requirements. Copyright protects all works of human ingenuity, and its protection is granted for the following original creations:

- Literature.
- Art.
- Science.
- Computer software.

The copyright holder has the following rights, also known as moral rights:

- The right of disclosure.
- The right of paternity.
- The right of integrity.
- The right of modification or variation.
- The right to withdraw the work from commerce.
- The right of access.

The right holder can authorise or prohibit the work's:

- Reproduction in any form or proceeding.
- Communication and distribution to the public.
- Translation, adaptation, amendment or transformation.
- Distribution to the public.
- Copies being imported.
- Use in any form.

Protection. Copyright subsists automatically from their creation but can be registered with the INDECOPI.

Enforcement and Remedies. Enforcement is through initiating an infringement action in administrative proceedings or through a criminal action if the infringement is considered a crime.

In administrative proceedings, the penalties for breach include:

- A warning.
- A fine of up to 180 tax units.

- Temporary closure of the business for 90 days.
- Seizure of the goods.
- Permanent closure of the business.
- Publication of the guilty verdict and notification of interested parties at the infringer's expense.

The criminal penalties have recently been modified to introduce new crimes and sanctions including up to six years' imprisonment.

Length of Protection and Renewability. Protection lasts for the life of the author plus 70 years.

MARKETING AGREEMENTS

Laws regulating e-commerce in Perú

Electronic signatures are regulated by:

- **The Digital Signatures and Certificates Law.** This regulates electronic signatures. Electronic signatures have the same validity and legal effect as handwritten signatures in wills and other documents.
- **The Anti-spam Law (Law 28493).** This governs the use of non-solicited advertisement e-mailing. This law is governed by Supreme Decree No 031-2005-MTC.

2. Platforms regulated in relation to their use for marketing/sales purposes

Providers of online services or goods through virtual platforms or mobile applications must implement a Virtual Complaints Book to allow consumers to be able to exercise their right to complain and/or claim before an alleged infringement of the Consumer Protection Law and Defence Code. The terms and conditions must be included in the platform. Providers are responsible for, among other things, the:

- Suitability and quality of the products and services offered.
- Authenticity of brands offered.

ADVERTISING REGULATED IN PERÚ

Legislative Decree 1044 regulates acts of unfair competition through advertising. This includes:

- Acts against the principle of legality.
- Acts against the principle of social propriety.
- Acts against the principle of authenticity.

Advertisement of alcoholic beverages and spirits must include the warning: "drinking alcoholic beverages in excess is harmful".

Advertisement of financial services must:

- State the effective annual cost rate (Tasa de Costo Efectivo Anual) (TCEA) calculated for a 360-day basis.
- Announce the effective annual rate of return (Tasa de Rendimiento Efectivo Anual) (TREA) calculated for a 360-day basis.

Advertisements directed at children cannot, among other things:

- Lead children to wrong conclusions regarding the real characteristics of a product or the possibilities regarding a product.
- Exploiting the child's naivety, credulity, inexperience or sense of loyalty.

3. Sales promotions regulated in your Perú.

Sales promotions are ruled by Law 29571 (Consumers Protection Code), which establishes that their advertisements must include and display the:

- Term of the promotion.
- Minimum stock available for the promotion.

In addition, when terms and conditions apply for participating in the promotion such terms must be clear, easily to notice and obvious. It is possible to display this information in an additional source, as long as it is referred in every piece of publicity (this can include web pages or call centres where these do not involve additional costs to the consumers). The information provided in this additional source must be in accordance with the information displayed in the advertisement, and not contradictory.

Free prize draws and competitions are also subject to the Consumers Protection Code in relation to the provision of clear information and the suitability of what is offered in these events.

Data Protection

Data protection laws

The Data Protection Law regulated by Law No. 29733 guarantees the fundamental right to the protection of personal data as established in the Peruvian Constitution. The legislation sets out two legal proceedings to protect personal data:

- A disciplinary administrative proceeding.
- A constitutional habeas data proceeding.

Individuals can also file a complaint before a Constitutional Court if they feel that the data has not been sufficiently protected (such as confidential banking information).

Emergency Decree No 007/2020 approves the Digital Trust Law, which:

- Establishes measures to guarantee confidence with interactions relating to digital services provided by public and private sector entities.
- Protects personal data, ethics, transparency, digital security and consumers in the digital environment.

Directive No 01-2020-JUS/DGTAIPD governs the Processing of Personal Data by means of Video Surveillance Systems.

Product Liability and product safety regulations.

Product liability and safety are regulated by the:

- **Civil Code.** As a general principle of tort law, whenever someone causes injury to another person, the person who committed the tort is liable to give compensation. This principle also applies to damage and injury that results from a defective product.
- **Consumer Protection Law and Defence Code.** This code provides all consumers with the right to be warned about any danger associated with a product on sale that may affect the safety of the product or the health of the consumer. The consumer also has the right to receive all relevant information in relation to a product. A supplier that detects a product in the market that could represent any kind of risk for consumers must take all reasonable measures to eliminate or reduce this risk.

Key regulatory authorities relevant to doing business in Perú

Competition

Main Activities: The competition authority is the National Institute for the Defence of Free Competition and the Protection of Intellectual Property (INDECOPI). Its main functions are to:

- Supervise free private initiative.
- Remove illegal bureaucratic barriers.
- Defend and guarantee free and fair competition by sanctioning anti-competitive and unfair behaviour.
- Correct market distortions.
- Protect consumers' rights.
- Protect credit by conducting insolvency and bankruptcy procedures.
- Grant and protect intellectual property rights.
- Supervise, control and authorise relevant operations of mergers and acquisitions, or any other form of corporate grouping.

W www.indecopi.gob.pe

Environment

Main Activities. There are separate industries and supervision agencies that apply environmental laws and regulations for each economic sector. However, these are co-ordinated through the Ministry of Environment.

W www.gob.pe/minam

Financial Services

Main Activities. Banking, insurance and pension funds are regulated by the Superintendencia of Banks, Insurance and pension funds (Superintendencia de Banca, Seguros y AFP).

W www.sbs.gob.pe

Other

Main Activities. The Superintendencia of Capital Markets (Superintendencia de Mercado de Valores) regulates all matters related to capital markets.

W www.smv.gob.pe

Other Considerations

There are no further important considerations

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140 | ESTUDIO
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