



Ministerio de Relaciones Exteriores

DOING BUSINESS IN PERU

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RODRIGO,
ELIAS
& MEDRANO
ABOGADOS

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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 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.



Ministerio de Relaciones Exteriores

秘鲁生意经

2012年6月

RODRIGO,
ELIAS
& MEDRANO
ABOGADOS

秘鲁生意经

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I. 国家概况

秘鲁在20世纪90年代初开始，进行了全面的现代化进程，其中包括面向对维护促进私人经营活动，投资和经济增长所需要的稳定可靠的法律框架的建立。因此，该国吸引了大量的资本投资，为经济持续增长的允许。

发展农业，渔业，矿业，电信部门，以及主要在能源，天然气，交通运输，重大基础设施项目的完成，都有助于增加内部消费和扩大国际贸易，从而使秘鲁成为南美最具吸引力的国家之一的投资机会。在这方面，秘鲁将继续进行谈判，并进入到自由贸易协定，同时加强整个太平洋盆地国家的商业关系，包括美国在内的。

本文件简要介绍了法律框架，适用于任何人或实体在秘鲁做生意感兴趣。总结关于外商投资，企业结构替代，一般性税务处理及其他有关规定的规例，以解释在秘鲁开展商业提供法律手段。不用说任何商业的最有利的结构，必须逐案的基础上确定，因此，本文件并不旨在取代适当的法律意见。

II. 建立业务据点

A. 永久性建筑物

在一般情况下，秘鲁关于公司的法规和在其他司法发现的类似。

该公司是一家股份公司资本代表的股份和其股东的权利，在一般企业的法律和各自公司的法律规定的补助资金。不同种类的股票可能存在。差异可能被授予股东的权利，义务由业主承担，或两者同时。一个单一的股票类的所有股份享有同等的权利，受到同样的义务。

该公司可能发行无投票权的股票，按照法律规定的条件，应提供有权收取优先股股息。如果有可分配利润，该公司需支付首选的基础上的无投票权股股东的股息。

(1) 法团

企业要求至少有两个创始股东以提出一公开文件，必须包括章程和法律声明，说明除其他事项外，股东，他们的地址，该公司的法律名称，其企业宗旨，资本存量的名字，企业的形式，与最初的董事任命。经公证的成立文件必须提交于公司注册处。

(2) 股东的责任

无论选择企业的类型，股东承担责任对公司债务是有限于股东的贡献量。

(3) 资本

作为一般规则，“一般公司不需要为注册资本的最低限额。然而，在某些情况下，法律也要求企业必须形成与最低资本额的基础上，其活动的性质（例如，在国家金融系统的公司，企业管理，养老基金和就业外包企业）。

在所有情况下，股份公司的股票必须完全认购，每股必须支付至少25%的股息。

必须通过“股东大会的投票权的成员多数的增加和资本存量的减少和相应的修订，企业通过法律。这些决议必须在一份公开文件中规定，提交公司注册处。

(4) 治理与管理

公司治理的机构一般如股东大会，董事会，管理层。

股东大会的会议是公司的最高权力机构。在股东大会正式召开，并在法律法定人数出席，其管辖范围内的事项（如法律和企业通过法律成立）以多数票决定。召开股东大会必须每年至少一次，在本财政年度结束个月（每年12月31日）内，以便评估该公司的管理，其在上一财年的经济表现，以及应用程序利润（如有），除其他事项。

一个公司的管理是由股东选举产生的董事会。在封闭公司的情况下，理事机构的董事局的存在是可选的。一个董事会必须至少有三名董事。董事会成员可能是秘鲁人或外国人，定居或非注册。没有必要为了成为一个董事会成员而做股东，除非法律规定。董事可在任何时间删除。

董事会必须股东和社会公众提供及时，可靠和足够的信息，由法律确定，有关公司的法律，业务和财务状况。董事会负责执行股东大会会议通过决议，除非后者另有决定。

一个公司也由一个或多个经理管理。如果一个封闭的公司不设董事会，总经理将负责管理和合法代表公司。

由股东或董事会，经理可以随时删除，这取决于对身体作出委任。

除非另有法律或由股东大会特别决议指出，否则被假定的总经理，除其他外，有权进入并执行普通的行动和有关合同的企业宗旨，并代表公司。

(5) 利润分配

利润由股东给的出资比例分配，除非在公司章程或法规另有规定的除外。

公司须在每个财政年度预留储备基金的设立或增加其税后利润的最低10%，直到数额达到等于资本存量的五分之一。储备基金，用于补偿为某一财政年度的亏损，如果没有其他储备或累计利润。

必须以现金支付的股息金额相等的可分配利润的一半，在每个会计年度后，减去必须设置为储备基金拨出的金额，若有要求，由股东代表至少20%的总投票权的股票。这个请求只与紧接上一个财政年度的利润有关。

(6) 财务报表

董事会在其缺席的情况下，总经理，必须准备在每个会计年度结束的年度报告，财务报表和利润（如有）的建议，以便他们在每年提交审议股东大会。

按照与法律，与一般公认的会计原则编制财务报表，并提交。(IFRS)

公营机构，按照法律规定，在全国注册会计师协会和资本市场监管局 (Superintendencia de Mercado de Valores - SMV) 提交季度财务报表所列的核数师进行年度独立审计。

封闭公司或其他在SMV监督下的实体，其年收入从销售的商品或服务，或总资产的监督下等于或超过3,000 (3,000) 纳税单位(UIT)，必须提交的SMV金融报表审计的会计师学院认可的会计师事务所，按国际财务报告准则和SMV的成立的规定和条款。财务报表提出的SMV公众查阅。

(7) 股份转让

股东可转让，抵押或自由抵押他们的股票，除非法律，公司通过法律的，或正式注册公司限制股东协议转让，抵押或产权负担。这种限制可能不被理解为对所有的公司股票转让，抵押或产权负担的绝对禁止。

成立由法律或章程时，一个暂时禁止转让，抵押或其他妨碍股市的方法是有效的。同意通过无记名股票的相应股份，或由股东大会会议解决。该禁令必须在一定时间内不得超过十年。它到期之前，可以延长，期限不超过十年。

在普通的公司，在其他股东有优先受让的权利，股权转让是有限制的，仅当该权利是法律明文规定。在封闭公司的情况下，一般的规则是，股东有优先受让的权利，除非通过法律状态。此外，它可以建立在封闭式公司的法律，股权转让必须由该公司和/或批准，股东可以作为替代继承人在收购临终已故股东的股票。

以下不允许在公共机构：

限制资本的自由转移；股份协商上的任何类型的限制；或在股票转让事件，优惠的股东权利。

(8) 少数股东

一般企业法为保护少数股东确立了不同的措施。例如，占至少20%的投票权股份的股东有权要求董事会，股东大会召开会议。如果不召开会议，股东可以请求法官发出司法召集会议。在一个开放的公司，占5%的投票权股份的股东有这个权利。

在某些情况下，一般企业法授予撤回权给那些他们在大会上已投反对的股东，缺席的股东，这些人可能已被非法剥夺他们的投票，或无投票权股份的业主。行使撤销权，责成该公司偿还谁就可能撤销对他的股票价值。

虽然有不同类型的公司结构可用于在秘鲁进行的业务，投资者一般选择这些类型的限制股东的责任。

¹

1 UIT = S/. 3,650.00, 约为人民币 8,612' 001,745.00 新元，美金\$ 1,360.00.

i. 合适的企业形式

公司和有限责任公司是一般企业法 (Ley General de Sociedades, or General Companies Law) 最重要和最常用的公司监管的类型, 这在一九九八年一月一日起生效至今。外国投资者也可以在秘鲁建立分支机构。

公司类型

我们的法律承认和调节三种类型的企业: (一) 普通公司; (二) 封闭的公司; 及 (c) 开放的公司。所有三 (3) 类型有任何法团的基本特征, 这意味着他们发行股本, 其所有权被划分成股份, 和他们享受有限责任公司。

与封闭公司处理的具体规定, 包括伙伴关系的特点, 而没有认识到他们的本质, 如资本股份公司的特点。他们寻求一个提供合适的企业结构予以数量有限, 时常参与管理公司的股东。封闭的公司, 不能有二十多个股东, 拥有和管理资金的个人因素的重要性, 其股价可能不会被列在利马证券交易所或证券市场上公开交易, 另一方面, 开放的公司满足一个或多个下列条件: (一) 取得了初步公开发行的股票或可转换成股票的企业义务; (二) 有超过750个股东; (三) 超过一百七十五 (175) 或以上的股东持有其股本的35%; (四) 注册成立等; 或 (v) 所有投票股东一致批准该议案, 采用这种系统。开放的公司必须公开其股票公开发行证券的登记注册, 并在利马证券交易所上市, 这意味着其股价可能不仅限于就其自由转移和协商。这种类型的公司是SMV的监管。

股东之间或股东与第三方之间的协议在所有类型的企业是有效的, 并在有关公司的所有事项执行的那一刻起, 他们与该公司正式记录。如果任何在股东协议和成立公司的章程细则或法规的规定之间存在任何差异, 在不损害当事人之间的协议建立的关系, 则以后者为准。

有限责任公司

规例适用的有限责任公司 (也称为SRL) 是类似的封闭型公司, 参与这种类型的公司和一般企业法的尝试保留的个人因素的重要性。这是一个资本由非股 (股份) 所代表的公司。有限责任公司未必有二十多个合作伙伴。

(1) 法团

有限责任公司最低由两个创始合伙人注册成立, 必须通过提交一份公开文件包含成立, 并通过法律, 章程, 其中必须包括合作伙伴人数, 他们的身份证明文件和他们的地址, 法律名称的公司, 企业宗旨, 公司的邮件地址的名称, 和管理人员的任命, 及其中事项。

公证的成立文件必须向公司注册公司其拥有住所为何。

(2) 责任

合作伙伴不是亲自为公司的债务承担责任。

(3) 资本

在公司成立的时间, 合作伙伴的贡献, 必须全额认购, 每股至少必须支付英寸25%。至于是企业的情况下, 没有要求纳入资本的最低限额。

企业通过法律必须包含有关手续的规则, 必须遵守的增加和减少资本存量, 包括合作伙伴的第一拒绝权, 而这些案件中, 如果合作伙伴拒绝, 哪些股票可以提供给非合作伙伴。

(4) 治理与管理

普通合伙人会议是有限责任公司的最高权力机构。它的行动受规范，适用于全体伙伴的会议且符合一般企业法。该公司是由一个或多个管理人员，代表企业宗旨有关的所有事项管理。经理不得亲自参加或通过任何属于公司宗旨下的第三方业务。

(5) 利润分配

利润按给伙伴的持股量的比例分配，除非法律另有规定。

(6) 财务报表

关于财务报表的编制和批准的规则必须包含在企业的法律。财务报表的编制和提交，在符合法律和按照普遍接受的会计原则。

(7) 股份转让

无论是谁拥有一个或多个股份公司的记录中，应被视为以上。由转让方和采购方签订了公共契约的基础上进行了转移。

在非合作伙伴的股份转让给事件，其他合伙人有优先受让的权利。由法律可能建立协议和条件，在这种情况下，转让股份和标准，评估其价值。但没有在任何情况下会决议完全禁止转让。

(8) 少数民族伙伴

大会上必须要求至少有20%的资本存量才能成为代表合作夥伴。

ii. 分支

外国实体可以在秘鲁设立分支机构，被视为有永久的法律代表，并按照授予他们的代表的权力，享受由母公司分配给他们的活动领域中的程序的自主权。

(1) 建立

外国公司分支机构的设立，通过由秘鲁公证人准备公共契约，以下信息(包括其他项目)，其中必须提供：
(1) 资本分配给其在该国开展的活动的分支机构；(2) 分支的活动和声明，指出这些活动是母公司一部分的企业宗旨；(3) 分公司地址；(4) 至少有一个永久性的法定代表人在该国为委任。

此外，以下必须放入公共契约：
(1) 母公司的良好信誉，其原籍国的证书，证明既非其公司章程，法律也不禁止设立外国银行分行；
(2) 公司章程和副本，在其原籍国的法律由母公司和任何其他同等文书；
(3) 母公司的理事机构发出的决议，以便在秘鲁设立分行。

上述文件正本和副本，必须在母公司位于该国的秘鲁领事馆旁注或认证合法。

(2) 责任

母公司是由分公司承担的所有义务承担责任，免除责任的任何协议被认为无效。

(3) 资本

由母公司进行分支分配资产总额的活动被称为“分配资金”。

(4) 管理

分支需要有一个在秘鲁应被授权代表母公司签订合同永久的法定代表人。

(5) 利润汇出

分行到其母公司的利润汇款没有任何限制。

iii. 合资企业

秘鲁法律建立了两个不同类型的合资企业：财团和参与协会的合同。这不是一个封闭的清单，所以如伙伴关系的其他相联合同，根据秘鲁法律，允许共享风险或合资企业，尽管没有具体的规定，仍旧存在此法律。

一般企业法定义参与合同为一项协议，个人或公司资助一个人或两个人（不论个人或实体）在参与业务利润，它与第三方实行。在交流中，参与的合作伙伴通常会提供一些创业的一种贡献。在这种类型的合同，参加党仍然隐藏在第三党前面，其合作伙伴可能会从事商务活动。

财团被定义为一个合同，在这两个个人或实体一起为了参加某些商业活动，分享利润和降低交易成本。

财团不会从其合作伙伴中产生一个独立实体。

iv. 在/兼并与现有实体的投资

外国公司在秘鲁公司的投资没有限制。外商投资被授予当地秘鲁投资同等待遇。

企业之间的合并是受允许的，必须符合适用的先决条件及一般企业法的规定和手续。

B. 代理/经销商/特许经营/分销网络

秘鲁法律没有任何具体规定关于建立，必要条件，或机构处理，经销商，特许经营和分销网络。因此，与秘鲁从事的实体，任何机构，经销商，特许经营或分销，应当由当事人之间订立的任何合同的规定裁定。

特许经营协议可以注册於国防部学院和保护知识产权INDECOPI（秘鲁主管机关，负责商标注册）前来使用这种协议所涉及的商标。

C. 认可和登记

某些商业活动的事务，需要从适用当局事先批准。这是例如，银行和金融活动，保险活动，和电信等等。同样，任何涉及自然资源的活动，可再生或不可再生的，必须事先取得授权或特许。

D. 审慎的经济部门/对外国所有权的限制

秘鲁法律没有规定限制在秘鲁进行任何商业活动或拥有自己的财产，除了在下文第一至四节文字所指的土地的所有权。

E. 政治风险及相关问题

在过去的二十(20年)内,秘鲁提供了一个稳定的法律和商业环境。作为其结果,该国最近已审议投资级别的主要风险评估实体。只要符合一定的最低要求,外国投资者有权进入所谓的法律稳定性协议,下文第三节中提到的B。

III. 投资问题和税收优惠政策

A. 外商投资的法律待遇

秘鲁是由一般的制度管理,促进和确保外国投资。此外,关于采矿,碳氢化合物,电信,农业和渔业(其他地区)的具体法律进一步规范外商在这些领域投资。

有关外商投资的最重要的因素如下:

(1) 外国人投资享受由秘鲁人作为投资的同等待遇,这意味着外国投资者和秘鲁投资者拥有同样的权利和义务(没有群组较其他接收更好的待遇);

(2) 外国投资者可以在任何经济领域作投资;

(3) 根据法律规定,外商投资将被视为从国家以外的投资,在下列任何一种方式此会产生收入:

(a) 出资到一个新的或现有业务,以一般企业法设立的任何方式形成,无论是在自由兑换的货币,或有形或无形的资产形式。资本剩余,也被认为是外商投资的类型;

(b) 投资在秘鲁的货币,产生可以汇往国外的资源;

(c) 转换成股份的外国私人义务;

(d) 再投资;

(e) 位于秘鲁的房地产投资;

(f) 无形资产的技术贡献,如商标,工业模型,技术援助,专利或非专利技术知识,可以作为无形资产技术文件或指示(know-how);

(g) 投资用于购买证券,财务文件,以及商业票据在联交所交易,或银行存款证明,无论是在秘鲁或外币;

(h) 资源进入合伙投资协议或类似的合约;

(i) 任何其他类型对秘鲁的发展作出贡献的外商投资。

(4) 政府的事先明确的授权并不需要外国投资。一旦进行,投资应当予以登记于秘鲁机构 ProInversión (Agencia de Promoción de la Inversión Privada)。

(5) 没有外汇管制及使用,外币兑换和汇款是免费的。

B. 外商投资保护

缔约方可利用秘鲁的法律稳定体制，通过订立合同，被称为法律稳定性协议，在此基础上的政府保证安定性的某些法律制度和赠款持有人的某些特定任期及保障包括：(i) 对投资者和企业所得税；对投资者和企业所得税；(ii) 外国货币自由兑换和汇款的资本和利润（只适用于投资者）；(iii) 雇用工人（只适用于公司）及(iv) 促进进出口的措施，包括缺点（只适用于接受投资的公司）。此外，特许权协议订立有关的基础设施项目和/或公共服务，在投资者持有的权益可以得到法律稳定性，为授予特许权同期的期限。

秘鲁宪法第62条规定，合同，当事人之间的现状和法律效力，这意味着各方（包括政府）必须遵守这些并不能单方面修改。特别是，政府可能不会通过一项法律单方面修改他们，或以其他没有影响的方式离开他们。

法律稳定协议可以在任何时间进入，提供符合法律规定。尽管如此，如果在本地公司的资本存量的贡献形式的投资在法律稳定协议的执行前已经取得，这种投资在投资者和本地公司的法律稳定协议两者之间可被视为履行投资承诺，只有协议签订资本存量增加后十二个月内(12)已在当地的一家公司的会计记录注册。

(1) 投资者必须符合根据下文所载的任何情况，以收到上述法律稳定性体制下的保护

- (a) 出资美元US10' 000,000.00以上为采矿或碳氢化合物行业或其他行业US5' 000,000.00美元，必须设本在秘鲁公司。
- (b) 执行投资涉及与第三方订立金额的风险（例如，合资企业）根据前一段(a)所述引用的条款及条件。
- (c) 收购股份都直接或间接由政府拥有（通过私有化），只要超过50%的股份数额，期间，根据前一项(a)引用的条件。
- (d) 外商投资，也可以保证通过一项协议，即，外国投资者作为资本过剩货币捐款资本化的部分，进行数额，期限和条件参考(a)项。
- (e) 国外私人义务资本化（贷款资本化资本化）可考虑通过一项协议，通过协议可被视为保证外国投资，只要它做的数额和时间期间在上述(a)项中引用。

在上述情况下，透过秘鲁金融体系的一个实体投资者必须引导其投资。

(2) 对公司的要求接受投资

接受投资的公司也可能加入秘鲁政府的协议，如果他们收到投资，至少一个投资者符合在第(1)中阐述的要求。

实现这一要求的公司可能获得的好处，雇用工人相关的，促进出口和税收，只要它们满足下列之一的基础：

- a) 新的投资必须在数额超过其资本及储备的50%，此必须用于增加生产力，提高技术，也就是说，这的投资必须透过增资进行。
- b) 新的投资必须包括收购公司超过50%的股份，由政府直接或间接拥有（如私有化）。

(3) 协议下的保证权利

- a) 对于投资者：
法律稳定协议在以下几个方面提供法律保障给外国投资者：

- i) 所得税：股息和任何其他形式的利润分享，外国投资者将有权不会受到任何产生更大的税收负担税收影响，这是签订合同之日起生效；
- ii) 可自由兑换货币；
- iii) 自由汇出所有的资本，利润，股息和特许权使用费的权利，没有任何限制或限定；
- iv) 使用市场上现有的最佳汇率的权利；
- v) 非歧视性的权利。也就是说，没有政府的公司或实体（无论是在国家，区域或地方级），根据国籍，业，经济活动的类型，或地理位置方面可提供不同的待遇，关于投资方面，货币汇率，价格，非关税或其他费用，公司（包括自然人或法人），同等于任何其他原因。

b) 接受投资的公司

法律稳定协议提供公司接受法律保障投资，在以下几个方面：

- i) 所得税：只要该协议仍然有效，所得税体制不能修改。同样，应纳税所得额的计算应基于相同的率，扣除和在签署协议的时间所载生效的法例规定的规模，这种保护存在不管此修改是否证明對公司有利或不利 如前所述，只有那些符合条件的公司在第二点提出此保护的资格。
- ii) 雇用员工：该协议的期限，这些公司可能以任何方式雇用工人，在该协定的执行时间建立有效的劳动法律。
- iii) 促进出口，由海关法（临时入境的，缺点和免税的商品定位）建立，以及在一般销售税法规定有利于出口。

(4) 特征和协议期限

这些协定的主要特点是：

- a) 各方当事人具有法律约束力，不得单方面修改。
- b) 它们是由私人契约法（民法典）规定，而不是政府独家管理权。
- c) 他们有一个执行之日起的十（10）年的最高期限，在签订协议的情况下从事特许经营在基础设施和公共服务项目除外，在这种情况下，期限包括整个特许权的时间，只有在上述基础设施和公共服务项目优惠第059-96-PCM号最高法令条款下签署的。
- d) 他们可以放弃投资者和接受投资的企业，在这种情况下从提交豁免开始日期始共同立法得以应用。
- e) 投资者可分配到另一个投资者合同的权利，授权由主管实体。虽然在接受投资公司的情况下禁止分配，法律允许在企业重组（并购或资产剥离）的情况下，合约规定授予利益被分配到在重组参与方之一，只要主管单位明确授权后，从秘鲁的税务机关收到意见。
- f) 由双方商定的任何修订可能不是指期限，延长为期两年的进行投资，也不是在以下（先前提到的，1000万美元，在采矿和油气行业，或500万美元在别的行业）依法成立的限制投资的金额减少。如果修正案提供投资金额的增加，这种增加也可能被列入合法的稳定体制，由主管实体接受授权。

- g) 协议在下列情况下可依法终止：(a) 由投资者或企业的失败承担或分别收到捐款或购买，此者已经在规定时间内同意，(b) 投资者未能获得事先授权，分配给他们的合同权利和义务。

(5) 投资受到合法的稳定性体制

资本的增加带来了作为资本重估盈余或通胀调整的结果可能会包含在合法的稳定体制，只要ProInversión已采取的这种增加在30天内给出这种资本的通知。

(6) 国家组织代表政府为执行合同

ProInversión是国家实体，负责代表政府与外国投资者签订合同。

由ProInversión共同接受外商投资企业订立的合同签署，外交部或由外交部任命的人将将会进行投资。如果秘鲁和外国投资者希望投资于同一公司共同提交他们的请求，ProInversión应当主管实体。

IV. 运行的法律环境

A. 外汇

秘鲁法律没有任何有关外汇限制或限定。没有外汇管制，登记，批准或其他类似的限制，对于外币汇款或从秘鲁汇款。没有必要为了一个批准进行外汇交易，或携带外币。任何货币可兑换秘鲁币及可用在每一笔交易，秘鲁提供各方同意这样做。

银行账户可以打开任何形式的美元和其他货币，此外，信贷可能会同意美元或其他货币，没有任何特殊的条件。

B. 入境和签证要求

1. 商务签证

根据秘鲁的移民法，商务签证是签发给进入国家没有居留的意图的人。尽管这些人可能不会收到来自秘鲁的来源收入，他们可能会签订合同和进行交易。

商务签证并不赋予提供服务权利（无论是作为雇员或独立承包人）在秘鲁境内的实体，即使这些服务由非居民实体的名义执行。这条规则只允许有两个例外：(i) 注册成立的公司的董事费 (ii) 或作为讲师或国际顾问，凭借一个服务协议，不超过三十 (30) 连续日历日内，或者在任何十二 (12) 个月内累计费用。

2. 非長駐公司的外国工人

这样的移民身份授予给那些被送到秘鲁的外国工人，非居民雇主为了使代表雇主的合同服务。

两家公司都必须订立一个服务协议，基于本籍国外公司同意在秘鲁境内的公司提供服务的特定类型。在执行本服务合同，该本籍公司转移国外的一些工人到秘鲁。

获得这个移民身份的外国公民有权，合法工作三 (3) 个月，可以延长一 (1) 年。后经过的第一年，必须获得一个新的签证。

3. 工人移民身份

寻求工作及居住在秘鲁的外国工人需要获得驻地工人的移民身份。

为了做到这一点，他们必须签署外国雇佣合约，这是由秘鲁行政工作管理局批准，一旦它被证实（根据提交的文件），符合所有法律规定，外国工人的比例配额需遵守。

随后，必须提交申请给秘鲁人民入境事务处，然后允许他在该国为雇主工作的外国人的身份证。

C. 海关问题

海关总署批准的法令1053号法律调节一般的从秘鲁入境和出境货物的基础。

1. 进口

海关制度最重要的是外国商品的进口他们的明确使用或在该国的消费，只有本籍的单位或者个人可以作为进口商。

作为一般规则，没有进入该国的商品有进口的限制，虽然可应用于一些具体规定的限制（如健全，安全，环境等方面）。在这种情况下，进口的条件，由相应的实体，以取得具体授权或颁发的证书。

进口关税在进口货物中适用于从价税，额外的变动税，ISC，增值税，预缴增值税付款。

适用从价税率为0%，6%和11%，取决于进口商品的关税标题。超过55%所包含的商品，在目前的有效关税是0%的从价税率。

额外的变量税仅适用于某些农产品。率应取决于商品的类型和在进口时确定的参考价格。

ISC仅适用于一定的产品组：汽油，天然气，油（柴油），酒类，雪茄，烟草，某些车辆，等等。利率或金额将取决于所涉及的产品类型（如“税项”一节中讨论）。

增值税适用于大多数进口货物。只有有限的一些产品是免税的，根据这类型的商品，或进口货物的地方（例如在丛林地区的进口利益）而定。适用税率为18%。

增值税提前支付预付税将在未来的交易征收，有一小群产品在进口时支付不受此。适用税率是首次进口的10%；5%的进口二手货；和所有其他情况下的3.5%。支付进口货物增值税和预付的支付制度，可以用来对增值税应税交易产生的义务作为信贷。

进口货物适用关税和税收的计算基础是成本，保险费加运费（CIF）的价值。此值是根据海关关税总协定第七条实施相关协定及1994年（估价协定）世界贸易组织 - WTO贸易（关贸总协定）。

总体而言，在从海关仓库提领商品前必须支付关税和国内税。然而，进口商可以申请的综合保障体系，这是一个机制，允许四十八（48）小时内撤回，从承运人或装卸作业完成，或从进口报关货物的编号。

这一机制的有效运用有两（2）个要求，在承运人到达之前必须履行：海关进口报关单应已“编号，限制类商品应已获得特殊的进口许可。

2. 临时进口

也允许货物的临时登记。这些登记可以是两(2)个类型:供内部使用,随后再出口(适用于设备和机械包括货物在封闭列表为此批准的);并获得最终产品的转化和后续出口(适用于原料)。在这两种情况下关税支付和进口税暂停提交来担保覆盖等的关税和税收金额。

3. 出口

出口业务是免税的。一般规则来说,出口货物没有限制。然而,出口货物如濒危动物,植物物种和考古发现,是被禁止或限制的。

只有本籍的单位或者个人可以作为出口商。

在国外使用及当出口货物在相同条件下返回;货物将被改造,在国外修理或更换。在这些情况下,重新进口货物是特殊的税收法规。

4. 退税

秘鲁法规允许进口商品出口后退还职责,依据FOB出口货物价值的均一汇率5%,及其产值的最大50%。

只有企业在该国制造或生产货品(由自己或聘请第三方)采用进口原料,货物已出口后能获得这些利润。必须符合具体条件和要求才能获得退款。

5. 海关免税商品补货

这种制度允许进口自动豁免关税和进口税。豁免是在相同的金额相当于以前进口的商品价值(没有任何豁免),和改变来取得出口货物。

通过这一制度的出口商能够补充,免关税和进口税,在制造过程中的货物用于提供给他们的外国客户的原料和投入。

6. 其他海关手续

- 从秘鲁进入或撤出,所载货物包含国际货运航空公司包裹,快件,快递服务。
- 一个免税制度允许入站或出站旅客,在国际港口或机场内的授权机构,免税贮存和出售国内或国外的商品。
- 出入秘鲁的展览用途的样本。
- 出入秘鲁的行李和生活用品。

7. 国际贸易协定

秘鲁已经签署了一项贸易协定,以使货物在亚洲,太平洋地区,欧洲和南美洲国家的自由贸易。

目前生效的协议,包括那些与安第斯共同体(哥伦比亚,厄瓜多尔和玻利维亚)拉丁美洲一体化协会和南方共同市场(阿根廷,巴西,乌拉圭,巴拉圭,墨西哥和古巴),美国,加拿大,墨西哥,古巴,巴拿马,智利欧洲自由贸易联盟(其中包括挪威,瑞士,岛和列支敦士登),中国,新加坡,日本,韩国和泰国。

已经签署的协议将在不久的将来生效,为欧洲联盟,哥斯达黎加和危地马拉。

这些协议允许降低关税为进口货物必须支付。为此,必须履行每个协议的原始规定。

8. 反倾销税和反补贴税

按照WTO的一般规定对反倾销和反补贴措施，秘鲁已采纳规定，以防止和纠正正在倾销和补贴所造成的市场扭曲的竞争。秘鲁条文以防止不公平贸易做法，导致销售价格比出口产品的生产成本或给予补助较少。

对造成或威胁到秘鲁国内产业造成实质损害的倾销价格的某些商品征收反倾销税。直接或间接地征收反补贴税以抵消补贴，在原籍国时授予他们造成或威胁，造成秘鲁国内产业的实质性损害。国立国防竞争和知识产权保护学院 (Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual, INDECOPI) 征收的反倾销和反补贴税。海关管理局负责他们的收藏。

这些职务将有效而坚持的原因源于他们。他们必须在五(5)年后终止，除非终止将有可能导致倾销或补贴和对国内产业的损害继续或复发。

D. 税务业务和跨境交易

秘鲁宪法规定，税收的创建及修改，或完全履行由国会通过的法律，特别法令的情况下，某些归因是由美国国会授予行政部门。相同的前提下，也适用于免税。

秘鲁税制受若干规范。税法是主要立法机构管辖的税收原则，税收的性质，税收义务和税务总局机关，税务法院，税务诉讼，并征收税务罚款。税法不包含适用于特定的税收规定。它引导其他税收法律，如所得税法，一般销售税“，市税法，海关法的应用。

1. 税务总局

国立税务总局监管局 (Sunat) 是一个经济和财务处的机构。

它采集和管理的国内税，关税和其他外贸源性收费，构成秘鲁国库收入（特殊地，Sunat采集其他税收和法律规定的捐款）。Sunat也涉及税法，在收入方面发出裁决。

1.1 纳税手续

由税务总局发出的未偿付的税单审核后，纳税人可以在税务总局前声称判处的刑罚，没有必要提出一个未偿付的帐单，如果这是适用法律规定的期限内提交的索赔。如果要求被拒绝，纳税人可以税前法院提出上诉。行政阶段的税收程序结束在税务法院。对税务法院的判决，可在行政诉讼中司法机构提交前，启动司法阶段。

1.2 纳税人身份 - RUC

每一个人，公司，未分割的房地产，合伙人或任何实体，无论是秘鲁或国外，不论其税收住所，必须进行登记的纳税人识别记录 - RUC -后获得纳税人的地位或成为负责管理或由SUNAT收集的税收。纳税人或扣缴义务人确定分配用于符合其正式和实质性的税收义务(RUC)的11位数字的Sunat。Sunat以11位数字分配，确定纳税人或扣缴义务人的身分，用于符合其正式和实质性的税收义务(RUC)。没有不须登记的RUC，员工个人(赚取第五类收入)，在收入来源国非定居条件的预扣。

2. 秘鲁税收制度法律架构

法令771是秘鲁国立系统，该系统包括中央政府和地方政府的税收和某些非税收贡献的架构“。由于中央政府的税是所得税，一般销售或价值增值税(进项税额)，消费税，临时资产税，金融交易税，赌场，赌博和老虎机，特殊开采税，关税，单一税简化的政体税收，公共服务和费用。地方政府税，房地产税，房地产

转让税,车辆物业税,对非体育赛事活动,博彩税,市政促进税,路税,娱乐车辆税,市税捐款和市政费用。也有一些非税收的强制性供款,如社会安全的贡献,贡献国立技术工业训练服务(“SENATI”),以及国立建造业训练服务(“SENCICO”)的贡献。

以下是税收在秘鲁更广泛的应用描述,报告发行时间(2012年6月)。这份报告还包括采矿活动有关的若干税收问题的说明。

3. 所得税

3.1 适用范围

从资金,工作和这两个因素的联合应用获得的收入征收所得税;资本收益;所得税法(LIR)中明确表示第三方经营的收益;和估算收入,明文规定在LIR。

3.2 税权

秘鲁居民就其全球收入的所得税是个议题。非居民或在秘鲁的外国公司只对他们秘鲁的收入来源的常设机构征税。

3.3 秘鲁居民

被认为是在秘鲁的居民,在其中,(a)住在秘鲁的秘鲁个体;(b)已经在该国居住或停留在十二个月内超过183日历天的外籍人士;(c)在该国注册成立的法人实体;(d)分支机构,非定居在秘鲁的,在这种情况下居民身份适用于秘鲁的收入来源的常设机构的分支机构,代理机构或其他机构或其他常设机构。

3.4 秘鲁来源所得

“从秘鲁来源收入”一词包括,除其他事项外,产生和/或房地产,贷款,资本投资,技术援助,用于在该国境内的经济收益,特许权使用费和位于或经济财产所产生的受益于该国境内,个人以及在该国境内进行的工作,这是从市民,商业,商务或在秘鲁境内进行衍生的其他活动。

3.5 企业所得税制度

商业实体是受企业所得税制度。商业实体的定义包括公司,合伙企业和其他任何形式用于开展业务。定居的伙伴关系,有限责任公司,应课税基础和协会以及合资企业的税收待遇,由合营保持独立核算,与注册成立的公司是相同的。商业实体缴纳所得税 - 在企业层面 - 征收30%。此外,个人(无论是长驻还是在秘鲁非长驻)非长驻企业取得的股息分派进一步受额外征收所得税,这种分布的价值率在4.1%。

3.5.1 应纳税所得额的确定

(a) 一般规则

以一般规则来说,企业所得税制度适用于对纳税人的净收入。所得税计算的净收入是扣除费用后的结果产生,并保持其来源的收入。

(b) 非居民

在非居民法人实体的情况下,净业务的应纳税所得额,一般将代其支付或计入总金额。然而,从销售货物或销售权利,或从折旧资产的剥削获得的收入的情况下,从总收入中扣除的资产的成本金额将产生净收入,在由SUNAT证实以前这些成本可能会被扣除。

3.5.2 扣除 - 亏损结转

常驻企业有权要求在经营业务过程中所使用的资本资产的折旧扣除，提供不超过在LIR所规定的最高限额，并在会计帐簿登记。折旧年限取决于资产的性质。最大的年折旧率是车辆20%；硬件25%，20%在采矿，石油，天然气和建筑活动中使用的设备和机械的情况下，建筑物的情况下在5%；在10%其他固定资产的情况。如果无形资产视为使用寿命有限的无形资产，如软件，专利和作者的版权，也可抵扣无形资产摊销。摊销率可能在第一年的100%或10%的10年间，根据纳税人的决定。

秘鲁居民公司一般都有权结转至少维持在上一财年，以抵消在随后的会计年度所赚取的应纳税所得额的税务亏损的部分。对于这样的目的，纳税人可以选择两个系统之间的一种：(i) 第一，允许四(4)年产生年度进行税收损失；(ii) 第二，允许税务亏损可无限期结转，但只能以抵销有关财政年度期间所赚取的净收入的50%。秘鲁税制不允许亏损结转。

3.5.3 每月付款

本地上市公司必须每月预付所得税，依所得税法规定的方法之一，在有关月份累计收入。如果纳税人没有应上年度所得额纳税或没有开始进行业务，将以纳税人的每月净收入的2%每月付款，这比例可能会被修改成每年两次(一月或七月)。

3.5.4 预扣税

需要预扣那些支付或信贷作为“第二类”(个人因资本或股息收入)收入和“第五类”(就业收入)的特点；人，公司和所需的实体时，他们支付或信贷“第四类”收入(独立个人劳务)；实体保持完整的会计记录，收入和支出，工资收入或信贷或一个义务持有人或其他证券的持有人；证券结算，结算实体，投资资金或在信托管理员在法律上所述；以及任何其他经Sunat证实的人。

在支付秘鲁的非定居受益者，收入来源的情况下，这种付款的人必须代扣代缴，依法缴交给Sunat的净汇率产生的金额。一般来说，非居民实体定居纳税人支付的秘鲁来源收入所得税扣缴征收率在30%(15%的税率适用于在某些条件得到满足的技术援助的情况下)。

在具体情况的利益，某些情况下，减少了4.99%的扣缴率，可申请无关非居民的贷款支付利息。

此外，降低预扣税率也可能适用在一个有效的避免双重征税协定(秘鲁目前已与玻利维亚，巴西，加拿大，智利，哥伦比亚和厄瓜多尔签署该类型条约)。

3.5.5 报税和付款

四月左右必须从公司的年收入纳税申报表(和实体的企业所得税处理)提出，由Sunat确定日期。次年，今年的纳税申报，于12月31日关闭。没有任何其他的财政年度截止日期。

3.6 个人所得税法规

对于个人被视为居民纳税的目的，税款确定申请净收入的累进。为了这个目的，将每年的净收入工资总额，减七(7)纳税单位(约为美国9821美元)。

居民个人适用的税率是15%的工资相当于27个纳税单位(约为美国37,881美元)；21%，超过27个纳税单位至54个纳税单位(约美元之间37,882美元的和美国75,762美元)，和30%，超出了54个纳税单位(约超过美国75,762美元)。

对于非居民个人,一个单位30%的税率应超过总收入,不扣除上述七(7)个纳税单位。

3.7 采矿活动的税收

3.7.1 特别扣除规则

根据矿业法规定,采矿特许权的收购价值应摊销,自财政年度中,根据采矿法,采矿权的持有人当时确定的期限内必须完成的最低生产水平。该条款将确定于可能生活的定金,计算考虑的证实和可能储量及最低的生产义务。

如果采矿权在依法设立的最低生产水平之前被遗弃或灭绝,收购价值可能在发生上述任何财政期间内摊销。此外,采矿权后发生的勘探费用自最低的指令性生产阶段开始,在各自的财政期间或自那时可完全扣除。

在财政期间它们产生的发展和准备,允许该网站一年多的开发费用可以完全扣除,或在这样长期和两个额外的年摊销(即整体的三(3)年摊销期限)。

3.7.2 矿业公司公共基础设施投资的税收优惠

根据矿业法,矿业公司对公共基础设施的投资可能是所得税扣除费用。这项福利必须投资在道路,港口,机场;环境卫生工程;能源,电信,教育,卫生基础设施及公共设施,娱乐和其他公共基础设施项目。

投资必须经主管机关(即道路的情况下,运输和通讯部)的获准。可能是所得税扣税开支的投资金额将只有部分公共基础设施的工作特点有关的金额。此外,不会有相关的维修,收购土地,或投资前和投资研究的福利开支。

3.7.3 特别矿业税

自2011年10月1日起,在开发及生产阶段的矿业公司须收特别的采矿税。稳定协议的公司,根据一般的矿业法收取所谓的特殊贡献生效(这是政府自行商定)。

特别矿业税根据适用的会计法则,从矿产资源的销售公司上季度的营业利润征收。特别采矿的实际税率从2%至5.36%不等,并根据该公司的季度利润决定。没有最低的特殊开采税。切实地缴纳税款决定在它支付今年的所得税扣除费用。

3.7.4 开采矿权

在2011年9月,秘鲁国会通过修改矿业的开采费,这是自6月生效,2005年的立法。矿业开采费是有利于位于矿产资源的地区和当地政府,由矿业公司支付开采费。

在2011年9月,颁布2011年10月1日起生效的法例,已修改的矿业开采费规定。因此,矿业开采费现在是一个季度的经营利润的百分比;有效税率从1%到7.14%不等;它可以是一个在其所在支付年度的年度所得税扣除费用的目的。申请矿业开采费在法律规定的公式计算的金额是低于各自的季度销售收入的1%,后者将被视为由公司支付的使用费。最后,根据新的法律也有矿业开采费的规定,采矿特许权受让人为议题。

3.8 转让定价

在销售和其他财产转让的情况,与提供服务相同,尽管经双方同意,有关交易税的目的应始终被视为在其相应的“公平市场”价值。如果各方从“公平的市场”确定价值,税务机关将为买方及卖方作出必要的调整。

在“相关”政党之间或居住在避税地区的实体进入到交易的情况下，相应的“公平市场”的价值。在相同或相似条件下应被视为已同意或独立人士之间，可比较交易的，按照当地的“转让定价”规则。

秘鲁转让定价规则是基于经合组织的长度原则。秘鲁税务机关允许关联方之间的交易价格调整，当他们不相符转让定价规定。一般来说，适用的转让定价规定的目的，相关各方必须(i)有技术的转让价格研究；(二)保持所有的转让定价研究佐证资料 and 文件；及(iii)提交年度税收转移定价回报。如果不遵守这些要求，该公司将受到法律所所述的罚款。

4. 增值税

4.1 适用范围

增值税(VAT)是一种消费税，适用于以下交易：(一)在秘鲁出售动产；(二)在秘鲁提供或使用服务；(iii)建造合同；(四)真正出售第一房地产构造；(五)进口货物。

应税销售价格 在转让动产会有 的情况下，无论在合同或起先的转让和由双方商定的条件的谈判交易的指定。公司免费动产的转让也被认为是出售，除非某些条件得到满足。

在该国提供服务时，服务提供者是秘鲁的一个常驻企业所得税制度，无论在地方执行合同或支付赔偿。服务将被视为在该国使用，服务提供商是所得税的非居民服务消费或用在秘鲁消费。也有增值税的范围内，但某些例外，商业资产之间的相关企业免费转让。

4.2 人员缴纳增值税

增值税纳税人是个人，公司，法人，不规律伙伴关系，协会，信托，互惠基金和投资基金用于执行任何交易主体的增值税。此外，有可能会受到作为责任方购买货物的增值税规定，当卖方不是秘鲁的居民；个人，公司或指定的法律或法规的任何类型的实体，在一个证券信托，证券化的财产，根据其目的，除其他外，受托人进行操作的情况。

如果他们通常进口货物或开展活动的主体给增值税，个人和任何类型的实体，不开展经营活动，可能是根据增值税规定。同样，将增值税纳税人的合资企业，大财团及其他形式的商务合作合约，保持独立核算的投资者或合营。

4.3 增值税计算

一般来说，增值税的征税基础是销售的商品或服务，可以由税务当局考虑其公平的市场价值调整支付的价格。在施工合同的情况下，增值税的税基将是建设的价值，在房地产销售，这将是获得的收入（不包括50%的土地价值），以及在进口的情况下，这将是海关除增值税外价值加权利及税款影响的进口货物。

增值税税率为16%。它必须添加2%的税率，相应的市政府促进税管的规定，适用于增值税，总税率在18%。

4.4 财政信贷

每次有一个增值税的交易主体，提供的商品和服务的价值评估及收集增值税。它适用于生产和销售周期的每个阶段，没有累积效应。一般来说，每个供应链中的卖方的商品或服务，收费在其销售的增值税和有权扣除这一数额的采购（“财政信贷”）支付的增值税。增值税规定下，为了给财政信贷购买商品或服务，必须构成对纳税人的经营成本或费用。根据所得税规则，即使纳税人不受这种税，必须用于增值税应税交易。此外，税款必须分别所述在购货发票；及支持发票，在其他条件中，必须已按照法定的要求发出。

尽管出口业务不征收增值税，受到履行一定的要求，出口商可以恢复其财政信贷，相当于在相应月份的出口FOB值的最高限额18%。

4.5 宣言和付款

要缴纳的税款，按月确定扣除同期增值税的财政信贷。如果在任何给定的时期内，财政信贷超过应交增值税，多余的将是代表纳税人的信用。这样在接下来的几个月，多余的将被应用在财政信贷，直到它被耗尽。

4.6 增值税早期恢复采矿活动的制度 - 27623法规

秘鲁国会藉27623法律的批准恢复一个早期特定的增值税制度，适用于采矿活动（“早期采矿恢复制度”）。该制度允许持有人进行采矿勘探活动的采矿特许权，这仍然是一个预先生产阶段，来收回支付的增值税。某些商品的进口或当地购买后，收购等勘探活动有关的某些服务和建筑合同。

为了涵盖早期采矿恢复制度，投资者必须与秘鲁政府签订勘探投资合同 - 与主管机关（即能源和矿业部） - 说明至少作出投资美元\$ 500,000.00的承诺。

如果不延长，采矿恢复制度将只持续至2012年12月31日。

5. 资产净值税

此税，所谓的“ITAN”，征收公司净资产的价值，其相应的资产负债表上反映为前一年的12月31日。

已经在生产阶段的公司必须支付与上年12月31日相应的ITAN。每当它已转让资产或提供的服务关系到企业的经营宗旨，公司将被视为已经在“生产”的阶段。

ITAN取决于0.4%的税率应用，超过S/. 1' 000,000净额资产的价值。一个较低的值净资产不受ITAN。可以在一个分期付款支付税收或平等在九(9)个月，四月至十二月个月之间按月分期。

原则上，纳税人有可能考虑ITAN款项：(i) 作为扣除费用；或(ii) 信用来抵消相应的所得税每月预付款和他们的年度所得税。如果在一个会计年度结束支付ITAN超过年度所得税，纳税人可能要求退还这些过量。最多(60)工作天期间自上述提出相应的应用程序的日期内，必须给予退款。

6. 金融交易税

金融交易税(ITF)的适用，除其他外，在秘鲁银行系统的个人和公司持有的银行帐户上的任何转让，转移，借记卡或信用卡。它也适用于收购银行本票，银行证书和类似的工具，而不使用在当地的银行账户持有的资金。

税率是0.005%，并必须由相应的本地银行扣缴税款。

7. 选择性消费税

选择性消费税征收进口和某些在本地出售的所谓的“奢侈品”，如汽车，雪茄，香烟，白酒，啤酒，燃料和其他。

根据有关良好的性质，基于三个不同的系统加以税收：(一) 基于“良好的价值“(如在公共交通工具的30%); (二) 具体为基础(例如：每公升S /1.50“皮斯科” - 秘鲁酒); (三) 公定价为基准(如箱啤酒27.8%)。

8. 银行条例

自2004年以来，在秘鲁境内的企业，向第三方履行付款时必须符合一定的手续。建立一个手续需要通过秘鲁银行系统付款，如金额大于3500笔（秘鲁新索尔）或1000美元（其中合同义务的货币而定），以纪录费用，成本和/或税收抵免所得税影响。

9. 税收优惠政策

9.1 从公共基础设施投资的税收优惠 - 法规29230

根据法规29230，在一般的公司可能会签订与各区域和地方政府的协议，以资助或履行上市的PROINVERSION优先项目清单公共投资项目。一旦定案的工程，必须转移到区域和地方政府。中央政府将给予证书给投资者 - 区域和地方公共投资证书(CIPRL)。这些证书可能被用于该公司，以抵消其每月和每年，相当于上一财年的所得税的50%的相关年度的收入纳税金额。如果证书不使用各自的财政年度，由于50%的限制，中央政府将发出新的证书，以往规定的数额增加了2%的信贷。如果证书没有在十年期间使用，该公司可能会要求从SUNAT报销。

为了能够认购协议，按照一定的法规，公司必须选择区域和地方政府。此外，公司应登记在公司进行公共基础设施项目的注册表。

9.2 稳定性协议

请参阅上述B点第III节。

E. 劳动和就业

1. 劳动合同

(1) 个人劳动协议

(a) 无固定期限劳动合同

劳动法规定，所有员工必须无限期雇用。固定期限合同只可在某些他们符合法律规定的情况下提供。

(b) 劳动合同或固定期限劳动合同的具体种类

在法律允许以固定任期雇用的工人最重要的案件如下：(一) 开始或增加操作（从开始一个新的商业活动所产生的合同），(二) 市场需求（为了满足企业生产增加订立合同），(三) 替代（合同订立，暂时代替该公司的永久雇员）；(四) 有一定的项目或特定的服务（先前成立的合同目的和特定的时间）。

每任期的劳动合同，根据其类型有一个最大的周期。然而，没有可能超过五(5)年。合同必须以书面形式订立，及必须通知劳动管理局相应的登记。

定期合同也可用于特殊行业，即非传统产品出口，建设。

(2) 集体协议

由一个或多个雇主和一个或多个工会或劳方代表签订集体协议，以规范工人的权利和他们与雇主的关系，

以及影响这种关系的任何事项。

在秘鲁法律规定，必须遵循程序由劳工和雇主签订集体协议。如果双方没有达成协议，法律规定各种途径解决冲突，如和解，调解，仲裁。宪法还确认了工人的罢工权利。

(3) 特别协定

鉴于参与提供服务的活动的特殊性质，特殊制度存在承包劳动力，关于采矿，农业，土木建筑，外籍员工，微型和小型企业员工等等。每个制度是由特别立法建立其特性和规格。

(4) 非劳动协议

(a) 培训生合同

培训生合同不符合劳动关系，他们的目的是培训尚未加入劳动力市场（理想的年轻人）的工作队。关于培训合同的类型包括学徒合同，实习合同，青年见习合同，见习，重新就职。

提出服务类型的人无权从工作合同产生的合法权益，但为特殊的设立此类服务。

(b) 独立的服务合同

这些合约只可用在独立的服务，在任何类型的从属或控制，行使对从这些工作中受益的部分，是该缔约方提出服务的情况。根据这些系统承包者无权得益，这是例行的工作合同的一部分。

(5) 劳工年龄

儿童和青少年法为了一个合法的未成年人授权执行工作，提供了根据工作合同具体的最低年龄。最低年龄取决于所执行的活动，虽然一般必须不低于14岁。

另一方面，在私人养老保险制度的退休的年龄是六十五（65）岁，在那个年龄阶层的劳工可以选择申请退休金。

同样地，我们的法律强制和自动规定劳工70岁退休，只要劳工享有退休金，尽管各方可能达成相反的协议。

(6) 劳工的国籍

外国工人的招聘规定，秘鲁或外国公司可以雇用外国工人，只要后者不超过工人总数的20%。同样地，它提供了外籍劳工的付款总额不得超过工资总额的值的30%。

尽管上述规定，上述比例限制不适用的情况下，作为一个外国人，其配偶是秘鲁人或外国人移民签证的情况下。同样，也有因为他们执行工作，涉及的专业，管理或领导的任务，在其中被豁免的外籍劳工的情况，。

(7) 轮班

普通一天工作8小时，或每周最多48小时。一天的工作结束后进行的工作，必须被视为加班。部分劳工自愿加班。加班费前两个小时，每小时不得少于25%，基于劳工收到工资。35%的比例，是适用于任何额外小时。

雇主必须保持“考勤登记”，以保持工人、学员和工作场所的第三方服务的进出。

(8) 有薪假期

(a) 每周休息一天

工人有权利每周24小时休息。这一天的休息，最好采取周日。然而，由于公司活动的性质，可能会采取其他天。

(b) 休假

工人有权每服务满一年三十(30)日历天的带薪休假。必须采取的休假时间在累计工作一年后的一年。在适用的一年不承认休息期间，雇主导致一个额外的月薪作为一项赔偿责任，劳工已经收集休假报酬到工资上。总经理和其他一些高水平的员工不得有权获得这种赔偿。

(c) 假期

员工有在以下节假日带薪休息的权利：1月1日(元旦)，复活节(圣周四和周五)，5月1日(劳动节)，6月29日(圣彼得和圣保罗)，7月28日和29日(独立日)，8月30日(利马圣罗莎日)，10月8日(安加莫斯战役)，11月1日(万圣节)，12月8日(圣母无原罪日)和12月25日(圣诞节)。

(9) 产假和福利

女职工享有45天的产前假和45天的产后假。产前假，可累积在产后假，在于员工的选择。多胞胎的情况下，应当增加30天产后假。同样，在产后期间结束，母亲享有每天一小时的哺乳假，直到孩子一岁。

(10) 薪酬

我们的立法认为薪酬为工人为他们服务所收取的总金额，不论以现金或实物，工人可自由运用。然而，存在其他法律概念，如特别的奖金，利润分享，和价值的工作条件，等等。

付款的形式，由劳动者和用人单位之间的相互协议所建立。劳工收到超过两(2) UIT的每月付款，也有可能为雇主建立了每年支付总额。这一数额包括受法律和传统福利的公司，利润分享的例外。

员工享有下列好处，其中包括：

(a) 最低生活工资

工人应领取每月最低收入，约283.00美元。

(b) 利润分享

立法法令677和892建立私营公司人员利润分享制度。工人的份额不是基于雇主的收入，而是按照所得税规定计算的年度收入。必须由雇主取决于雇主的活动分配给他的员工的比例，从应税利润的5%至10%不等。

(c) 年资支付遣散

所有工人都有权享年资支付(CTS)的，只要他们至少每天工作4小时。这样做的好处是工人选择每

半年存入银行或金融机构。

每个存款金额相当于计算工作几个月的月薪的十二分之一。计算工资是劳动者对他的工作作为补偿经常收到的总金额，不论以现金或实物。金额必须是劳动者选择放在银行的存款。

(d) 法定奖金

工人一年有权获得两个奖金，一个在七月份（独立日）另一个在十二月（圣诞节）。每项奖金的金额相当于一个月的工资。

(e) 工人有权在四（4）年的工作完成后，与雇主，由雇主支付寿险的权利。该法规定了本保险的特点。保费由雇主支付，其金额与各保险公司协商。

(11) 社会保障医疗保险

社会保障卫生系统提供了以下好处给受益者：预防，意识，保健的恢复和补贴，社会福利，工作和专业疾病。该系统由一个公共实体管理，称为社会安全健康研究中心（Seguro Social de Salud, 或EsSalud）辅以健康计划，雇主并透过私营医疗服务提供者（Entidades Prestadoras de Salud, 或EPS），在自己的合同提供计划，在某些情况下可能会在EsSalud行事。

(12) 终止劳动关系

(a) 个人解雇

如果工人严重违反合同被解雇，雇主按照法律规定的程序，工人不享有任何遣散费。

如果雇主没有原因的解雇一个永久性的劳工，他有权得到一个半月的工资，每服务满一年，用12个月的工资作为遣散费的上限。如果他没有兑现遣散费，他可以要求复职。同样适用于雇主伪造工人的严重违反合同。

最后，如果雇主解雇劳工为了一个禁止的原因，如是一个工会成员，怀孕，或歧视，劳动者可以要求予以恢复和补偿的薪酬，他停止接受才导致解雇的结果。在相应的程序结束时，工人可以选择收以上所述的遣散费和不复职。

(b) 集体解雇

有四（4）个以下可能的情况雇主可以集体解雇工人。

第一种情形是裁减人员。在这种情况下，雇主可能对经济，科技，组织或类似的原因减少人员。只要基于劳动合同终止涉及到的劳工人数不超过公司总人员的10%。为此，必须在行政工作局前进行行政程序。在这种情况下，工人有权向任何被资遣的寻求遣散费。

第二种情况来自雇主的解散和清算。雇主可能在任何时间同意解散或清算，而不需要事先授权或任何原因或理由来证明自己的决定。在秘鲁公司的解散并不会导致任何类型雇主对劳工的责任。根据股东大会通过一项决议，该公司解散后，清盘人有权终止工人的劳动关系。在这种情况下，工人有权寻求对他们工作关系终止任何类型的遣散费。

第三种情况发生在该公司宣布破产时。

最后，如果公司面临不可抗力，持续了至少三（3）个月时，合同可能会被终止。

(13) 劳动中介和第三方服务

(a) 劳动中介

劳动中介只允许有一个暂时，补充或特殊服务的需要。法律明确规定，根据该计划聘请的转移工人可能无法提供服务，涉及雇主的主要活动正在进行。

该法律规定，可能被转移到一个用户公司的劳工人数不得超过用户公司员工总数的20%。这一比例将不会被用于补充或特殊服务，只要服务提供者承担全部的技术自主权和开展活动的责任。

(b) 第三方服务

第三方服务意味着服务公司雇用开发的特殊活动，只要他们执行代表他们自己及承担风险的承包任务。有自己的财务，技术和物质资源；和工人在其独家控制。使用这些类型的合同，不限制工人的个人和集体权利。

我们的立法已经建立完整，下面组成第三方服务：管理合同，项目合同，放置第三方负责公司生产不可或缺的一部分的目的的合同，通过承包，分包企业提供的服务，只要他们执行代表他们和承包风险的任务；有自己的财务，技术和物质资源；拥有在他们独家控制之下的工人。

该公司雇用的服务公司共同承担责任，后者为工人付款和法定福利。

2. 工会

工会的主要功能是给一个集体性质的冲突或抱怨的特定行业的工人代表，并与雇主签订集体协议。

工会的形成取决于行业或打算与他们的雇主或雇主谈判工人的级别。如果工人单靠一个公司级别去谈判，他们将需要形成公司工会，一个最少需要二十人的工会。另一方面，如果他们打算与几个雇主谈判，他们将要组建工会，其中至少五十名工人必须携手合作。

多个工会可以共存于一间公司。不过，只有大多数是附属工人的工会于这样一个水平上协商。附属工会是工人的自由和自愿性，依据工会的法律提供。

3. 养老金制度

在秘鲁，有两种退休金制度。然而，在这两种情况下，工人必须至少65岁才能申请退休养老金，且必须有最低年份。在特殊情况下，作为一个员工进行高风险活动的结果，退休年龄和长寿要求可能会提早，他们在较年轻时可能就会收到退休金。

(1) 国民年金制度

国民年金制度是由政府通过办公室退休金管理的系统。所有的工人须在私营部门的劳动法规，必须遵守这样的系统，除非它们是隶属于私人养老金制度。

(2) 私人养老保险制度

在私营机构的劳动规章的工人可以选择所属的私人养老基金的管理与私人养老金系统。

4. 补偿税

工人得到补偿的主要税种如下：

(1) 社会保障医疗保险

9%之月薪存入社会保障医疗保险及雇主收取。

(2) 国家和私人养老保险制度

在国家的养老保险制度的情况下，提供13%的赔偿金额。在私人养老金制度的情况下，提供12%和13%之间不等。在这两种情况下，劳工是负责支付，但必须由雇主代扣代缴支付。

(3) 所得税

所有与工作相关的收入会征收此税。员工需缴费，但必须由雇主代扣代缴支付。

为居住在该国的工人，税是根据净收入（在减去7 UITs一年中收到的付款总额）累进。在该国的非居民工人，一般税率30%适用于总收入，没有任何扣除。

F. 反垄断和竞争问题

秘鲁立法促进和保护自由竞争。反对自由竞争的行为，为镇压反竞争法（Ley de Represión de Conductas Anticompetitivas, LRCA）禁止和制裁。INDECOPI的制裁在每个案件之前就已决定与执行。

竞争法规由三（3）种主要行为批准：滥用支配地位；横向共谋做法；和纵向的合谋行为。

1. 滥用支配地位

根据LRCA，经济主体享有在相关市场的主导地位时，有可能因为没有其竞争对手，大幅抑制，影响或扭曲。供应商或客户能够抵消它在这些市场的供需状况。

一个在市场上的主导地位，一般如一个因素发生，如：

- 在相关市场的一个显著的参与。
- 商品或服务的供应和需求的特点。
- 技术开发或服务。
- 竞争对手的融资和供应来源，以及分销网络的获取。
- 法律，经济或战略类型的进入障碍。
- 供应商，客户或竞争对手和他们谈判的力量。

持有主导地位，影响或不影响实际的或潜在的竞争对手，不构成非法行为。垄断或主导地位本身并不拒绝，只有滥用这种地位才被认为是反竞争行为。

LRCA规定，当一个经济主体持有在相关市场的主导地位，滥用支配地位进行验证，这一立场不适当地限制竞争，如果尚未持有此地位，将不可能有这一立场，获取利益，损害其他竞争对手。

被LRCA认为是滥用主要的行为是：

- 无正当理由拒绝订立合同。
- 竞争者之间的歧视（不包括普遍接受的优惠或做法）。
- 条文配合。
- 永久性中介团体或组织的不合理阻挠。
- 建立独家经销或销售协议，没有正当理由，没有竞争或类似的条款。
- 辱骂，并重申司法或行政程序的使用，这是限制竞争的影响。
- 煽动第三方提供的商品或服务，或不接受他们。
- 在一般情况下，所有这些行为，有预防或阻碍接入或在市场上的永久的，现有的或潜在的竞争对手，皆由于有一个更大的经济效益以外的原因。

这种做法受到制裁，甚至主导地位从法律规则或文书，合约或行政法规时发生。值得注意的是，所有的行为将会导致滥用市场支配地位，产生了相应的禁令。

2. 横向合谋行为

横向合谋做法意味着，好像他们是一个联合行动的几个竞争对手。这样做的原因是，有时公司发现，与其他竞争对手合作，较有利与他们竞争。合作使公司的产量减少，提高他们的价格，增加各公司的利益。

根据LRCA，这种做法可能包含限制，以防止或扭曲竞争的目的或影响的竞争对手之间的共同协议，决定，建议或做法。法律不仅限于那些具有法律效力的协议，而且还包括通过商业伙伴关系，甚至认识各方之间的合作活动，决定或提出的建议。

合谋做法是绝对禁止或相对的禁令所监管的。绝对禁止与其做法本身是非法的，而相对的禁令相关的做法，需要检查，以确认他们是否有反竞争的效果。

绝对禁止涉及到不属于其他竞争对手之间的横向协议的法律协定补充或附件。这些协议包括：

- 固定价格或其他业务或服务条件；
- 限制生产或销售，特别是通过配额；
- 客户，供应商或地理区域的分布，或
- 建立在公共或私人的招标过程或招标或以其他形式的公共承包或现行法例拟采购的立场或弃权票，如公开拍卖。

横向合谋构成相对禁止做法涉及的有：

- 直接或间接协调一致的定价或其他业务或服务条件的建立。
- 协调一致的限制或控制生产，销售，技术开发或投资。
- 协调一致的客户，供应商或地理区域的分布。
- 当产品不符合技术标准和对消费者产生负面影响，采取协调一致的行动来解决产品质量。
- 协调一致的歧视应用在竞争对手之间的做法。
- 不合理的一致搭配在条文。
- 无正当理由拒绝签订合同。
- 协调和不合理的接入或阻碍竞争对手的永久性市场，协会或中介组织。
- 协调一致的给予，职位或建议，或从他们避免在公共或私人的招标过程或招标或其他形式的公共承包或现行法例拟采购，如在公开拍卖。
- 其他具有同等效力的做法，旨在获取比其他原因的更大的经济效益。

3. 纵向的合谋做法

根据LRCA，这些都是在不同层次的生产，分销或营销链，旨在限制，防止或伪造自由竞争，经济主体之间操作的合谋行为。这些类型的做法，需要至少一方当事人有参与其中在前相关市场的主导地位。

非法纵向的做法可能包括涉嫌滥用市场支配地位和横向合谋做法。

所有纵向的合谋行为构成相对的禁令。在这种情况下，竞争机构必须证明，在所有情况下，这种做法有或可能有竞争的负面影响。

4. 证明合谋做法的

合谋做法很难证明，竞争机构可能会藉由签名和推定来凭借，以验证在竞争对手之间是否存在类似的行为。相似不自然的市场竞争力的操作，如同时价格解释波动相似，所提供的产品质量和可比性的迹象。此类类似的行为并不被市场操作的竞争力自然的解释，如价格波动的同时，所提供的产品质量类似，有可比的迹象。

在这个意义上说，竞争机构必须作出具有竞争力做法的谨慎和严格的分析。例如，它必须确保在行为上的相似性不是只是怀疑的结果，但它已被完全证明，没有一致的做法，这是能够证明这种相同的行为是有理性的另一种解释。

5. 改正制裁措施

通过强加的，视情节轻重，可能高达12%的销售总额或侵权企业所赚取的收入罚款，可能受到INDECOPI的反竞争做法制裁。

另一方面，INDECOPI有权责令纠正行动旨在重建竞争力的过程，并补充在LRCA可能侵犯所载的规定实施的制裁。这些可能是：

- 停止或活动的表现。
- 订立合同的义务。
- 非执行反竞争条款或法律文书的规定。
- 中介团体或组织接入。

6. 合并控制

在秘鲁，合并控制，到现在为止只考虑电力部门。然而，INDECOPI提出一些措施，包括在一般系统控制自由竞争的合并。

每一类型，无论是直接或间接，严禁在电力部门的纵向整合。唯一的例外是集中不意味着减少，损害或限制竞争和自由同意。

另一方面，电力部门的反垄断和反寡占法的规定(LAASE)，纵向或横向的集中可能出现在发电和/或传送及/或分销，将发出一个INDECOPI自由竞争委员会事先批准的程序，以避免造成集中下降，在能源市场的自由竞争和存在的损害或预防的做法。

为此，LAASE提供集中理解为以下操作执行：合并；公司共同成立；通过购买股份参与的利益，或通过直接或间接控制其他公司的收购，或其他任何合同或法律的形式，其赋予公司直接或间接控制，包括订立合资协议，非法人的合作伙伴关系，或任何其他类似的商业合作协议。还包括收购执行生产性资产的任何公司；或凭借任何其他行为，合同或法律的形式，包括遗产，社团，协会，股份，企业人士，一般主要集中的信托或资产，竞

争对手，供应商，客户，股东或任何其他经济体。

重要的是要澄清LAASE范围内的包括那些集中的行为，尽管在国外执行直接或间接涉及在本国境内从事发电，输电和/或分销活动的企业。

集中行为需要从INDECOPI事先授权，这些行为直接或间接涉及公司从事发电和/或传输和/或分销业务，之前或之后引起了授权申请，共同或分开，比例等于或低于15%的市场份额，在横向集中行为，至於在纵向集中行为的情况下参与市场的比例等于或大于5%。

不损害所载之条文中提到的规则，发电，输电和配电业务解体的改革从来没有完全实施。目前，秘鲁共和国，仍保持在发电和配电市场的重要份额。此外，LAASE批准以来，集中，纵向和横向各类案件时有发生，INDECOPI已授权，没有建立任何类型的结构性限制或约束。

不损害可适用制裁的实施，未取得INDECOPI事先授权，授权该实体带来无效的集中，如必要的法律行动：订货生产性资产的出售，出售股份，宣告无效的行为，等等。

G. 环境问题

1990年的环境和自然资源法规 (Código del Medio Ambiente y de los Recursos Naturales, or CMARN) 的颁布，是在秘鲁的环境立法系统化的首次尝试。1993年秘鲁宪法还建立了一系列在环境政策方面的执政原则，政府的作用在制定国家环境政策和促进自然资源可持续利用的作用。

此外，法令757，为促进私人投资的法律 (Ley Marco para el Crecimiento de la Inversión Privada) 修改CMARN，并建立了环境的主管职权。

秘鲁环境立法在这方面，已经经历了重大发展，旨在（除其他目标）创建一个减少官僚作风的环境中，潜在的环境影响进行业务的公司可能面临的行政障碍，不必要的费用，以及没有进行商业活动可能出现的社会矛盾。

因此，各种法律规范已实施了近几年，以提供高效，协调的行动，每一个国家实体，从而建立环境立法的原则和国家环境政策奠定基础，而最重要的设置方针为消除相互重叠的当局。

同样地，一般的环境法 (Ley General del Ambiente, or LGA) 废除CMARN，旨在协调政府运作和维持商业活动的行为，以达到在该国可持续发展。它也为经济发展建立明确的规则和机制，促进经济活动的引入。以促进“清洁政策” 携手并进经济活动的正常发展，创造一个明显的例子给予税收优惠的基础建立。

LGA还引入了创新的改变，包括以下内容：加强国家环境委员会 (Consejo Nacional del Ambiente，这是在环境事务的最高国家职权)；建立一个国家综合法规制裁，提供各经济部门必须适应制裁，和侵犯的其他法规；引入新概念“环境责任”，其目的是提供环境的负面影响所产生的可能损害的赔偿，最后，建立环保责任分配制度。

然而，全国环境影响评价制度法律可能是在过去的几年制定的最重要的环境法律之一。旨在规范的投资项目，可能会造成对环境的负面影响的环保认证，建立投资项目分类，根据每个项目，以及可能会造成一个标准化的程序，所有主管环保部门对环境影响的程度标准履行环保认证，以给予任何投资项目。

H. 消费者保护和产品责任保险

消费者保护和产品责任是受保护和消费者的防御 (Código de Protección y Defensa del Consumidor) 的法规。法规保证消费者获得合适的产品和服务所有的有效机制，以保护他们的权利，建立几个标准，以减少资讯不对

消费者的青睐。因此，法规建立供应商的义务，以及消费者的权益，包括必须提供给消费者的资讯，产品和服务的适用性，广告的要求，消费者的健康和安全，与消费者的合同，并有关特定产品或服务的条文。

消费者保护委员会 (Comisión de Protección al Consumidor) 负责审查该守则任何规定的侵权索赔。

消费者保护和防御的法规适用于所有进入秘鲁境内或有影响消费关系的消费者。

I. 土地使用和房地产

秘鲁法律规定，保证收购，转让，保护房地产。由政府所采取的具体措施有三个方面的推力。第一，获得财产权的保护是在宪法层面上，确保这一权利的自由行使和供奉它是不可侵犯的。第二，宪法还规定，外国人（无论是自然人或法人实体）购置财产方面有相同的地位，秘鲁人关于土地从边境地带位于五十（50）公里内基于国家安全原因提出了具体的异常。第三，一些法律机制已经制定，以确保有关收购，转让交易，及使用的财产的安全性。

1. 私人 and 公共房地产

感兴趣的投资者在秘鲁取得财产首先应该了解私人房地产和公共房地产之间的区别。

私有财产的转移是由民法规定的一般规则管辖。根据这些规定，个人之间的交易获得广泛的合同可能性，甚至允许创建新类型的合同，被称为“非典型合同”，这个不是在现行法例的规定。监管内的法律概念，是真正的财产权利：地上权，地役权，所有权和使用权，等等。

“非典型合同”，是没有在现行法规之中。在内监管的法律概念中真正的财产权利是：地上权，地役权，所有权和使用权，等等。

秘鲁的法规也允许当事人订立初步协议拟收购房地产的草约。这是其中一种执行合约的方法，在双方同意进入未来合同的协议，当双方已签下草约的情况下，当事人如果不照初步协议执行，须支付违约金的可能。另外也有一种执行协议的方式，在这方式中一方同意在规定的期限中进行销售，另一方有权决定是否执行协议。

除了捐款和抵押贷款有一定的手續之外，其他一般有关房地产的协议是通过简单的双方同意。然而，建议的做法是遵守能证明有执行一项协议的有关手续，如书面协议，正式在公共契约的协议，或在公共登记处做记录。

在私人房地产，有一种特殊类型的物业只能通过特殊的手续了来转移。这些就是本地和农民社区所拥有的物业，在这种情况下，必须由相应的社区会议来批准出售物业。根据本次会议通过的决议，已明确被此社区选出的代表执行者来执行该协议。

公共财产，可能是政府的私有财产，或可能属于公有领域。在这两种情况下，有一个非常特殊的规定，任何个人对此类财产的使用必须符合手续的规定。私营实体可以购买国有产权，执行交换，地役权，表面权利，或使用权的协议，或为与公众有关的具体目的租赁财产。在这些情况下，必须遵循实体拥有的公共财产有关的行政程序；遵守法律为每个类型的操作提出的要求，并根据情况，参加拍卖或公开招标和其他投标人竞争旨在公平公开的收购。

2. 城市和农村土地

另一个必须考虑到的区别是土地的性质。这有可能是城市土地或农村土地。这种区别在于国有财产和私人财产都有效。

城市土地位于有发展商业,工业,住宅,公共服务活动,以及其他有关市区发展活动的地区。如果有意思收购某个城市土地,必须首先获得相应的地方当局必要的认证,无论是“土地开发和建设参数证”或“分区和道路证”。这些证书有为期三年的有效性,详细资料以及其他信息的使用和建设必须遵守的参数。值得注意的是,当证书有效时,虽然在三年内规范的变化可能会出现而引起土地用途和参数的改变,申请的人可以参考生效证书中所包含的信息。

农村土地是位于市区以外的地区,包括用于农业,畜牧业,和一般农村活动的土地。在大多数情况下,农村土地的称号可以修改成城市土地,但必须先拥有当地主管授权而且过程相当复杂。

3. 注册登记系统

国家公共注册登记处监督局(Superintendencia Nacional de Registros Públicos - Sunarp)是管辖房地产登记制度的机构。任何人都可以通过Sunarp取得财产登记证书(Certificado Registral Inmobiliario - CRI)。这个文件使买方能验证财产(土地及建筑的)存在和属性,登记主人的身份,并检查登记者是否有负债,抵押,或任何司法问题或法外处决的负债。

房地产登记的有效性是法律秩序保证的。所有出版并在记录中的信息是完全公开的。在这个系统中出现的业主经正式授权出售他们所拥有的物业。

J. 知识产权

1. 商标

安第斯共同体第486号决议和第1075号法令,秘鲁的独特标志保护制度。

在秘鲁如果想拥有莫个独家商标的使用权必须先要在显著标志局(商标局)注册此商标。任何能作为图形表示及在市场上区分该公司的产品或服务的图案及标志都可以作为商标。

在秘鲁也可以申请一个产品和服务的多级应用提案。如果所申请的提案符合法律规定的所有手续,并没有异议的话,程序将需要大约四个月的审核。如果有异议的话,则需要约一年半的程序。

注册从授予之日起为十年生效而且有十年期续约的可能。

一旦申请了提案,商标局在十五个工作日内以下,将审查提案是否符合法律规定的要求,主要所审查的是产品清单和服务清单是否属于此类及委托书是否已备案了。

如果在审查中发现有被省略的法律规定,申请人将授予六十个工作日的时间来纠正补足相关资料。如果在期限内申请人未完成上述要求,申请将被视为放弃及失去其优先审查的权利。如果注册申请符合法规要求,商标局会授权此商标的注册。

从公布即日起三十个工作日内任期内,任何有合法利益的人可以提出商标注册的反对。如果有异议的提出,商标局会通知申请人,如果认为合宜的话,在三十七个工作日内提出他的论点和文件证据,一旦任期已届满,或如果未提出异议的话,商标局将会进行注册资格考查。如果已提出异议的话,商标局将会决定授予或拒绝此商标注册。

商标续期注册必须在登记届满六个月前后适用。如果商标逾期则不得使用。

如果此商标三年内(从申请注销数起)在安第斯共同体(玻利维亚,哥伦比亚,厄瓜多尔和秘鲁)的国家成员没有被使用的话,商标注册将被有任何有兴趣的人请求取消的可能。

商业口号，商号，集体商标，证明商标和原产地的面额也算须登记的特殊标志。

商品名称是唯一在市场由它的实际使用所保护的独特标志，此标志的登记只是声明性的。

影响注册权利的分配，修订和其他规定，应提前在商标局予以登记，才能对第三方有影响。经协议许可后亦可登记。

2. 专利和工业品外观设计

安第斯共同体486号决议和第1075号法令，秘鲁专利权的保护制度。

在秘鲁，在所有技术领域，发明专利是能授权的。产品发明或程式发明，须要是新的创造，有一定的水平以上及适用于的工业应用等三个部分。运用和其他用途是不能申请专利的。

如果专利申请被提交符合法律规定，并没有提交反对一切手续，程序将需要4年的审核。如果被提出异议的程序，程序将需要五至六年的审核。

登记从提交申请之日起在于二十年生效。

一旦提出了上述申请，发明和新技术局（专利局）在六十个工作日内以下，将审查提案是否符合法律规定的要求，也就是说，规格，索赔，总结，图纸，委托书和转让文件是否已提交，如果适用的话，是否被秘鲁领事或加注正式合法化。

如果在审查中发现有被省略的法律规定，申请人将授予两个月的时间及可扩展为二个月（从送达消息的日算起）的可能来纠正补足相关资料。如果在期限内申请人未完成上述要求，申请将被视为放弃及失去其优先审合的权利。如果注册申请符合法规要求，从提交申请日或如在适用的情况下，从优先权已声称日算起，十八个月后，专利局会授权此发明的注册。

从公布即日起六十个工作日内任期内，任何有合法利益的人可以提出发明注册的反。如果有异议的提出，专利局会通知申请人，如果认为合宜的话，在以下六十个工作日内提出他的论点和文件证据。从应用程序的出版过了三十个工作日后，无论在期限内是否有提出异议，申请人必须给发明做技术审查。一旦任期已届满而申请人未作出该检查的话，申请书将会视为放弃。

如果专利局认为该发明专利是无法申请的或不符合规定的要求，应当书面通知申请人。申请人须在六十个工作日（从通知送达日期算起）任期内回答该通知。该期限可以一次额外延长到三十个工作日。如果申请人未在规定的期限内回答通知，或者已响应后仍有障碍授予专利权，专利局将否认这项专利。

如果期末审查是良好的，专利将被授予。如果不是完全良好的，只要专利索赔能接受的话，专利将被授。

为了保持专利有效，或在适当情况下，保持专利申请过程，必须支付年度费用。

实用模型，工业品外观设计及积体电路的布图设计也可以得到保护。这些作品的登记效率从提交申请算起能持续十年并不能续订。

转让，许可，修订和其他影响注册权利的行为，必须先专利局进行登记，才能对第三方有影响。

秘鲁在2009年6月6日成了“专利合作条约”（PCT）的成员。因此，从该日期之后在秘鲁所有PCT申请能进入国家阶段。

3. 版权

安第斯共同体351号决议和第822号法令，秘鲁执政的版权保护制度。

任何容易披露或复制的艺术，科学或文学的原始智力创作都能受到版权保护。

不同于工业产权，这些作品无需进行登记就可受到保护。此作品的登记是声明性的。

该作品的作者拥有该创作的原始所有权及对第三方有影响的专有权，其中包括道德和经济权利。

K. 因特网法规 / 电子商务

目前对此事的监管只存在于消费者的防御守则规定，其中规定，如在通过网路供应商有提供其产品或服务的情况下，信息必须是明确的，可以理解的，准确的及容易获得的。

秘鲁立法不包括任何其他有关网上交易和电子商务的规则。因此，任何这种形式的交易将受各方通过电子手段同意的条款来进行。

L. 融资问题/付款

与外资金金融机构的融资协议的实施，不受任何限制，不需要任何事先授权或与秘鲁中央银行或其他任何机关登记。根据该协议，如果任何利息或适用所得的扣缴税都已交了。国外债务支付是同样不需授权及不受限制的。

金融租赁活动有被秘鲁授权的实体受到限制。

M. “证券法”的问题

证券主要是受证券市场法（“SML”）的调节。此法适用于大量发行，自由流通的证券，并给予其持有者经济性质的信用，股权或类似权利。证券可公开提供或私下提供。

(1) 证券

所有公开发行的证券，必须事先在证券市场的公共登记处（“SMPR”）登记。SMPR是由SMV管理的。

SML，以及与其他SMV发出的法规，能建立一定的标准，如透明度和物料信息的及时披露。所有为信息传播而通过SMPR系统向市场披露的信息必须是真实的，清晰的，充分的和及时的。在SMPR中包含的信息都是能自由获取的，除非则信息，根据在立法中提供的某些情况下，已宣布成机密的。

证券市场的立法，主要规范的是以下不同类型的公开募股：（一）公开发售证券，（二）投标报价（oferta pública de adquisición - OPA），及（三）收购要约（oferta pública de compra de valores por exclusión - OPC）。

(a) 公开发售证券

对我们的立法来讲，任何向社会大众或测定区段的非机构投资者购买，出售或配售证券报出的要约都认定为公开发行证券。每个向一百多个（100）准投资者报出的要约都推定公众的。目前，秘鲁有设立立法的证券交易所或定期向指定的机构的投资者报价，会提供证券的最低统一价值或超过膨胀交易的数字与通货（在2012年相当于约S/450,000）。作为私家的报价（即不公开募股）。

公开发售的证券，应当在SMPR登记，资料备忘录，来自最新的两个财政年度的财务报表及若干其他文件和适用的规例中所描述的信息，应当向SMV申请。

信息备忘录应包含的信息如下：所提供的证券特点，将授予投资者的权利和义务，有关的风险因素，发行人的财务报表，跟经营机构、配售代理和安置程序有关的信息及其他有考虑到发行人的材料和经营方策的信息。SMV可能会决定任何须提供的附加信息。

根据本条约，出售证券可以在十八个月内（从证券登记日期算起）执行。

秘鲁立法，包含在其他证券交易和在国际公开募股的案例下，公开发行的证券的情况下的特殊规定。

(b) 投标报价 (*oferta pública de adquisición - OPA*)

根据OPA的规则，如果一个人或公司打算直接或间接的获得或增加对上市公司实际的参与权（定义为任何表决权资本的25%，50%或60%的收购，或能选大部分董事会发行人的能力或修订对发行人有效法律的能力），除非有豁免以外，应通过收购进行的条约。

应报价给发行人优先表决权，或股份的持有人，及在一段时间内有权获得该股份的持有人。

(c) 收购要约 (*oferta pública de compra de valores por exclusión - OPC*)

OPC的规则规定，如果证券登记的发行人，向SMPR请求该登记的取消，或批准有类似的交易（如使投资者持有的非注册证券终止的分割），除非有豁免以外，应推出收购条约。

所有SMV所委任机构的评估价值，须将OPC给与没有参与最低价格交易的批准或取消的投资者，

(2) 证券交易所 - 利马证券交易所

证券交易所是个集中交易机制，同时连接愿意进行证券交易的买家和卖家的管理机构。利马证券交易所（Bolsa de Valores de Lima）是目前在秘鲁唯一的证券交易所。

(3) 证券交易所中介团体

证券交易所的经纪公司是在利马证券交易所里进行所有交易的负责单位。

该经营机构须获得SMV的许可证和受它的管制及监督。

(4) 证券清理及结算机构 - CAVALI

CAVALI是负责在利马证券交易所里进行的所有交易的清算和结算机构，它必须先获得SMV的许可证。CAVALI机构也受到政府的管制和监督。

(5) 税务事项

当卖方是非注册机构，而且提供证券是在利马证券交易所成交的，上市证券的资本收益有5%所得税的优惠。（若非如此有30%的税率适用）。

N. 抵押交易

在秘鲁所控股的个人或机构担保权益是没有限制的。

根据秘鲁法律，最常使用的担保方式是以抵押贷款或以 物品担保 (Garantía Mobiliaria) 做保障。

(1) 抵押贷款

房地产和任何不动产资产都可以抵押。

为了建立根据抵押贷款的安全性，应遵守以下的必不可少的先决条件：

- i. 要有所有人或者其他法定代表人的同意。
- ii. 要有已经确定或可确定的交易合约或协定。
- iii. 担保金额必须是确定的或能待定的。
- iv. 必须包含可抵押已在登记处的房地产。

一旦抵押贷款在上述提到的合约做了登记，当局认定为具有法律效力的。

(2) 物品担保 (Garantía Mobiliaria)

只要有书面证据的话，物品担保能建立对任何私人商品或资产的担保权益。由此建立的担保权益登记，便允许其对第三方有强制执行的权利。

在相应的安全协议约定，物品担保可以直接由债权人执行，因此该执行不必向法院诉诸。

O. 诉讼 / 争议解决程序

秘鲁法律允许已通过法院或仲裁争端的决议。外国人也都受到同样的权利和国民适用的法律担保。宪法权利有正当程序和有效的司法保护。

1. 司法程序

司法程序是由在不同法律领域和有根据位置，将涉及争议的金额以及其他因素事项的不同类型专业的法院集成的。民事法院负责民事，商事和宪法纠纷，而刑事法庭处理任何根据我们“刑法典”或其他适用法律的罪案问题。

相关民事和商事的程序事项都包含在民事诉讼法 (Código Procesal Civil)，刑事程序是以刑事诉讼法 (Código de Procedimientos Penales) 处理的。请注意，上述代码已被新的法典 (Código Procesal Penal) 替换了。这法典已适用于在秘鲁的一些省份及编程在2013年12月为全国适用。依次，某些宪法的程序性事项是通过宪法程序守则处理的。

司法部是在全国各地的三十一个司法区组织的。一审法院包括民事和刑事法官。在每一个地区，将有一个上诉法庭作为二审上诉法院。对上诉法庭认定为一审行为的宪法，刑事和民事的事项有特定的程序。在这些法律程序中，以最高法院作为上诉法院。最高法院通常有法律事务案件的最终审判权。

在宪法权利 (如生命，健康，不歧视，就业) 保障的情况下；由于过程，物业，团聚，保密通信和私人文件保密性，银行保密制度，及等等现象；最后审查由宪法裁判所 (Tribunal Constitucional) 负责。宪法裁判所是一个不属于司法部的独立法院。

2. 外国法院判决执法

在秘鲁的外国法院判决执法须符合下列要求：(一) 将实施的判决不能解析根据秘鲁法院专属管辖的事项；(二) 呈现该判决的法院有根据自身法律规则冲突，并根据国际规则管辖的司法管辖权；(三) 被告人因该以该法院所位于地区的法律规定流程，在外国法院之前授予合理的出庭机会，而且有提供正当程序权利的保障；(四) 该判必须在渲染该判决法院的司法管辖权具有既判力的状态；(五) 在秘鲁共和国该两方之间的同一纠纷（这纠纷开始之前必须和外国判决已结束程序）没有未决诉讼（六）除非该外国法院的判决首先呈现，该判断不能与其他在秘鲁共和国强制执行的判决不兼容；(七) 该判断没有违反秘鲁共和国的公共秩序及善良风俗；(八) 必须有一个秘鲁共和国与在该判决已呈现的国家之间的条约，该条约的规定应适用。如果该条约没建立的话，需适用对等的规则（如对等被假设），在此由外国有管辖权的法院作出的判决将在秘鲁法院受理，而且将强制执行，除非根据该外国法 (a) 秘鲁法院发出判决不予受理等外国，或 (b) 秘鲁法院出具的判决与所处理的问题由等有管辖权的法院重新审查。

目前秘鲁共和国和美利坚合众国之间没有任何外国司法决议执法的条约。

3. 仲裁

如果各方同意的话，可以向仲裁提交任何民事或商业纠纷。

当仲裁在进行时，各方没有明文规定的任何事项，应由“仲裁法”裁定，该仲裁法中包含在秘鲁进行的国内与国际仲裁的规定。

即使是依据外国法律的裁决，外国仲裁裁决将按照以下仪表在秘鲁承认和执行：

1. 在纽约1958年六月月十日所批准的，仲裁裁决的勘测和实施公约；或。
2. 在巴拿马1975年一月三十日所批准的，美洲国际商事仲裁公约。

V. 合同和文档的表格及可执行性

合同在“民法典”监管下，民法典中有提出适用于一般合同和一些特定的法律关系与经济内容的一般规则。根据这些规则，只要不违反任何公共秩序的规定或善良风俗，并提供（如适用）所遵守的办理相关手续，合同当事人可以自由决定合同的内容。

“民法典”规定，明确合同内容由当事人提出法律视为缔约方之间的完全执行，除非必要的法律表示相反。内容必须包括所有义务，有关各方必须履行包括义务，做或不做。各方或完全履行所有义务时，双方同意终止合同。

“民法典”也包含适用于任何违反合同的一般规定，由此产生和解雇的责任，及所有该合同中各方的协议的补充。

VI. 截止 / 重组的企业进驻

A. 解散 / 清算

“一般企业法”阐述了一般公司和企业解散和清算的原因和过程。不过，也有一些，依据其特定的活动，必须遵循特定的清算制度（如金融机构）的机构。

1. 解散

公司的解散适用于下列情况：

1. 当公司生存期限的法律规定已届满。
2. 当其企业目的将完毕了，在一段长时间内不能履行或明显的发掘没办法实现。
3. 当出现了股东大会会议的持续闲置的现象。
4. 招致到净资产值已减成不到公司实收资金的三分之一，除非等资金有适当的增加或削减。
5. 根据法律确定的程序，在破产或无力偿债的情况下由债权人所批准的协定。
6. 在半年以上有缺乏股东的多元化。
7. 有通过最高法院的司法裁决。
8. 由股东批准的协议。
9. 该公司正式登记之前，任何企业设立的法律或在股东协议引起的其他原因。

当公司已解散时，董事会或任何其他股东必须在三十天向股东大会申请会议，在此会议该公司将决定，批准解散或采取一切必要措施来阻止公司解散。例外的事项，虽然公司是由股东和政府机构的运行，危害国内安全或公共秩序的有必要原因，秘鲁政府会迫使公司一切的活动。

一旦作出了解散公司决定，所有的代表性和责任的董事，管理人员和其他代表者须停止协议，并转移到指定的清算人。然而，该前任相关人员必须以促进公司的清算提供信息或协助。

2. 清算

清算过程是通过决定解散的公司启动的，直到清算过程正式完成，公司注册处记录其取消之前，该公司将保持其企业的存在。

清算过程由一个或多个清算人进行，该清算人主要任务包括制定清算启动后的财务报表，保持适当的会计，支付所有未偿还债务，执行和收集所有股东和第三方的贷款，和准备清算完成后的最终财务报表。在该公司的债权人还没完全支付之前，清算人不可以向股东分配任何剩余的金額。

清算人必须向股东通知财务报表和清算的任何进展。拥有10%以上的资本的股东，可向清算人要求清算过程的定期通报。

根据一般企业法，一旦其余款项已分发了，清算人应当在公司注册处前要求公司撤销登记。如果公司撤销登记后企业的债权人仍然有有待债务，这些债权人可以强以已清算过程中分布所剩余的金額向股东强制要求支付。如果所有资产实现已经完成而仍然有无偿义务的话该公司将公开破产。

B. 无力偿债 / 破产 / 重组

秘鲁法律规定，所有会干涉到秘鲁公司或居民的无力偿债，破产和重组过程，应通过破产制度 (Ley General del Sistema Concursal) 裁定。 INDECOPI是主管以上相关事件的政府机构，并具有对破产事项排他性和强制性对的能力。如银行，保险公司和政府机构(部委，税务机关，当地政府(直辖市)和不受本法之类的机构)。

当公司有超过资本1/3以上的损失或所逾期债超过了总债务人负债的1/3，破产可以已债务人的请求启动。当债权人的信贷在三十天以上的期间超过五十个纳税单位，债权人也可以启动公司的破产。破产程序将会寻求提供有序的情况，以便债权人决定是否要进行债务人的重组或清算。

之后将会给所有持有向债务人的债权(该债券须有INDECOPI的承认)的债权人举办一个“债权人会议”。一般债权人会议(最常用的用处)是来决定哪个以下的替代方案将成为债务人的结果：

债务重组计划，该计划包括持续债务人在其管理转变的活动及建立一个付款时间表。

债务人财产的解散和清算。

秘鲁的破产制度是高度“私有化”的。因此，债权人会议所做决定的健全性，合理性和可行性不会受到任何法院或 Indecopi 的介入。

若在违反破产法规，手续或滥用权利的情况下，只有至少有10%程序所允许的总信贷的债务人或债权人可以质疑债权人会议的协议和决定。

此外，除了关系到最终的刑事制裁以外，民法追偿的方法是可以透过优惠付款或物业交易，如有以下情况：
(i) 这些是在破产程序开始一年前的行为；(ii) 这些行为有负面影响债务人的财产。

在清算当中，支付方法将遵循以下优先顺序：

第一：所欠工人的薪资和劳工福利，及养老保险基金的款项。

第二：赡养费(只适用于个人破产)。

第三：房贷，物品担保，认捐，认股权证或超过债务人财产的预防措施，只要在破产过程开始前，该担保已经有正式登记而且有预防性的行为。

第四名：欠税(该欠税包括税金，费用，差饷，捐款，利息及罚款)。

第五：在先例订单所没有考虑到的无担保债权。

如果整个债务人财产的清算，解散和清算过程已结束，信贷还没支付的话，债务人必须向司法界宣布破产。

