



**CUATRECASAS**

# Doing business in Peru

2023 Edition







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These guidelines present some key issues for foreign investors interested in investing in Peru. They are not intended as detailed guidelines but simply to address practical issues to help investors planning to start investment projects in Peru.

They include legal issues that may require advice.

They must not be considered a thorough analysis of Peruvian law or interpreted as legal advice from Cuatrecasas.

These guidelines were drafted based on the information available on March 31, 2023.

Cuatrecasas has no obligation and assumes no liability with regard to updating this information.

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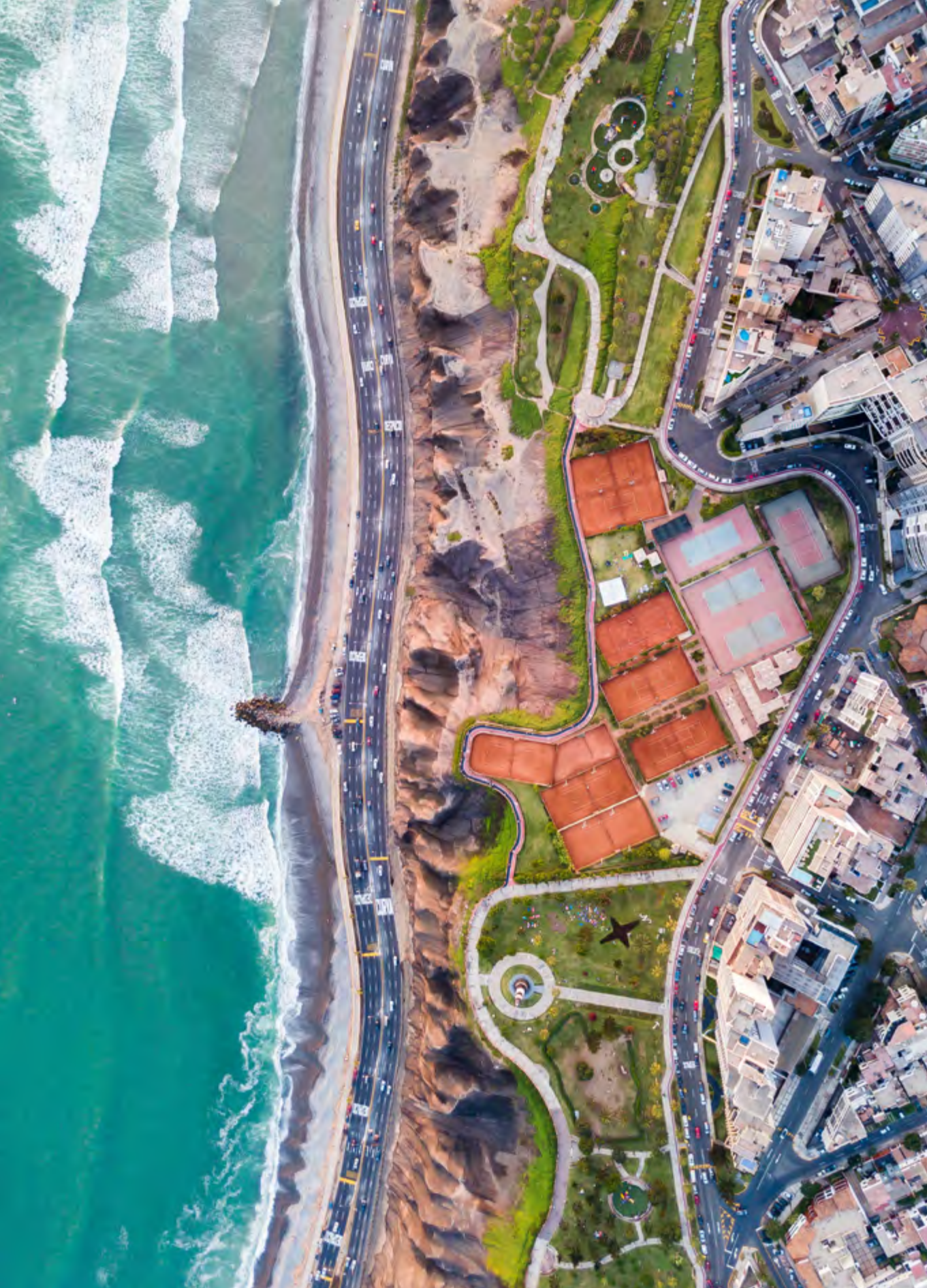




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# Introduction

This guide provides an overview of key legal aspects for foreign investors interested in investing in Peru. It is not intended to be comprehensive, but to address practical issues that will help investors considering an investment project in Peru.

Cuatrecasas is a law firm that advises on all areas of business law through a multidisciplinary, diverse and highly qualified team of more than 1,200 lawyers from 26 nationalities.

We have a network of 27 office in 13 countries and a strong presence in Spain and Portugal, where we are present in the main cities, and Latin America, where we have over 20 years of experience and a team of 200 professionals who operates from our office in Chile, Colombia, Mexico and Peru. We have a sectoral approach and focus on all types of business, with extensive knowledge and experience in the most sophisticated advice, covering ongoing and transactional matters. We focus on client service, incorporating ESG criteria and collective knowledge with innovation and state-of-the-art technology. We foment an innovation culture applied to the legal activity, which combines training, procedures and technological resources to contribute greater efficiency.

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# 1

## Corporate

### 1.1. Restrictions on foreign investment

Peru has a general legal regime that establishes and promotes guarantees for foreign investors. Section 63 of the 1993 Political Constitution of Peru establishes equal rights and obligations for foreign and domestic investors.

We highlight that investors can invest in any sector of the economy, provided it does not involve acquiring or holding assets within 50 km of the border or protected natural areas, unless an exception is declared by supreme decree due to public need or national interest, under section 71 of the Constitution.

The government's prior, express authorization is only required for foreign investment in certain sectors such as arms, private security and surveillance, and maritime and air transport. There are no foreign exchange controls, and the use, conversion, and remittance of capital is free.

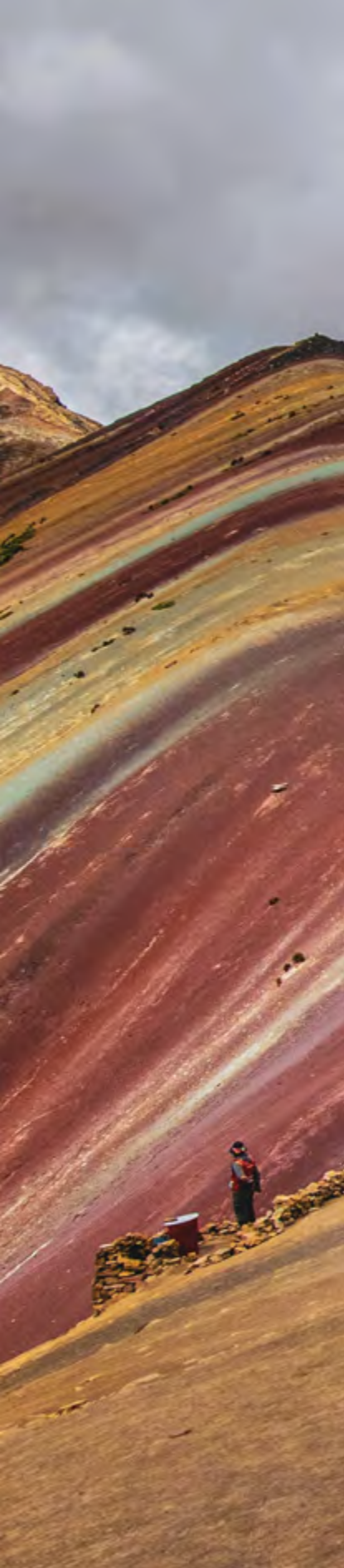
### 1.2. Stability agreements

Peru has legal stability agreements, which are agreements between foreign investors or the companies in which they invest and the Peruvian state, as an instrument to promote investment and guarantee the stability of the right to non-discrimination, to the applicable tax regime, and to the regime on currencies availability and dividends applicable to foreign capital.

These agreements have force of law between the parties and can be entered into any time, provided the investors (i) make investments of at least USD 10 million in the mining and hydrocarbons sector or USD 5 million in other economic activities, and (ii) they channel the investment through the Peruvian financial system.

Investment protected by stability agreements can be made in the capital of incorporated companies or companies to be incorporated, and they can be made in risky investments formalized with third parties, in concessionaire companies, and in investments requiring acquisition of over 50% of the shares of a state-owned company in a privatization process.

Stability agreements have a term of 10 years, except for concessions, where the term is subject to the validity period of the concession itself.



### 1.3. Company types in Peru

We briefly describe the most commonly used legal vehicles to carry out gainful activities in Peru. The most common company types regulated by the Peruvian General Companies Act are the public limited company (*sociedad anónima* or SA) and the commercial private limited liability company (*sociedad comercial de responsabilidad limitada* or SL). In both cases, the company is liable to its creditors with all its present and future assets, and the private limited company shareholders are liable up to the limit of their capital contributions.

#### Public limited company

Public limited companies are the most commonly used vehicle, since the limited liability restricts the shareholders' risk. There are three types of public limited companies: ordinary public limited company (SA), closed public limited company (SAC) and open public limited company (SAA).

The capital of this type of company is represented by shares, which are represented by share certificates issued by the company. These companies are incorporated with fully paid-up share capital and a minimum payment per share of 25% of its par value. They are managed indirectly through corporate bodies: (i) the General Shareholders Meeting: the decision-making body on structural aspects; (ii) the board of directors: the decision-making body on management and administration aspects whose members are elected by the General Shareholders Meeting, with a minimum of three directors; and (iii) the general management: the management body that operates under the guidelines of the other two and is elected by the board or the General Shareholders Meeting, as applicable. The term of the position is indefinite unless established in the bylaws. No minimum capital is required, although this is determined by the minimum amount to open bank accounts, as the initial capital sum must be deposited in a bank.

In general, transferring shares of a public limited company is fast and flexible as there are no formal requirements for those transactions such as registering the transfer with public registries, as the transfer is registered in the Shareholders Register, which is a private register. The information on the company's shareholders registered with public registries is limited to the founding shareholders and does not extend to new shareholders, whose information remains confidential.

Although, in theory, public limited company shares can be freely transferred, restrictions on the free transfer of their shares can be established in the bylaws and through shareholder agreements. Despite this, if the shares are listed on a centralized trading mechanism such as the Lima Stock Exchange, no restrictions can be placed on their free transfer.



- **Closed public limited company (SAC):** The maximum number of shareholders is 20, and their shares do not have to be registered with the public registry or the Public Registry of the Securities Market (*Registro Público del Mercado de Valores, RPMV*). The bylaws can remove the pre-emptive right and the board of directors; and the transfer of shares can be subject to the company's prior consent. Representation at the General Shareholders Meeting can only be exercised by another shareholder, a spouse, or a direct descendant or ascendant, unless the bylaws extend representation to other people. The right of withdrawal can be exercised if the share transferability restrictions regime or the pre-emptive right is modified and the board of directors is optional. It should be noted that the General Meeting of Shareholders can be called by notices, fax, or email, and it does not have to be published in newspapers.
- **Open public limited company (SAA):** A public limited company is open if (i) it has made a primary public offering of shares or bonds convertible into shares; (ii) over 35% of its share capital belongs to 135 or more shareholders; (iii) it is incorporated as such; or (iv) all the shareholders of a company with voting rights unanimously adapt it to that regime. A company is also considered an open public limited company when it has at least 750 shareholders. Its shares must be registered with the PRSM, and its bylaws may not establish restrictions on their free transfer. The Superintendency of the Securities Market (SMV) is responsible for supervising open public limited companies and can require a company to adapt to an open public limited company and to submit financial information, among other matters. Restricting pre-emptive subscription rights is not admitted, unless an agreement is adopted with the vote of at least 40% of the subscribed shares with voting rights, and it does not seek to improve any shareholder's position.

### **Commercial private limited liability company**

Its capital is divided into equal, cumulative and indivisible units (*participaciones*) that cannot be incorporated in securities or referred to as public limited company shares (*acciones*). That capital is made up of shareholder contributions paid-up in no less than 25% of each share. As with closed public limited companies, there must be at least two and at most 20 shareholders, who will not be personally liable for the company's obligations (limited liability), and a board of directors is not mandatory.

Unlike public limited companies, private limited liability companies (SRL) do not have a board of directors, and the company's management is entrusted to one or more managers who may not engage in the same type of activity as the purpose of the private limited liability company on their own or on behalf of a third party.



Shares cannot be transferred in a private limited liability company as expeditiously as those of a public limited company, as the shareholders will have a pre-emptive right on the shares to be transferred, and the transfers must be made by public deed and registered with the public registries. The information on shareholders of a private limited liability company is always public.

### **Incorporation process**

Companies are incorporated by public deed, which must then be registered in the public registries of the location of their registered office in Peru. This registration will generate a company's registration number. Anyone carrying out economic activities in Peru in specific premises must have the corresponding municipal operating license for the premises, which is granted by the local district municipality (in accordance with compatible uses and different regulations).

The process of incorporating a company usually takes around 15 business days. If the founders are entities not domiciled in the country or individuals not who are not there at the time of incorporation, the appropriate powers of attorney must be registered. These documents must be official translated, if applicable, and registered with the public registries. This process usually takes up to another 15 business days.

Although it is necessary to register the company with the public registries, it may perform certain preliminary acts on the condition of subsequent registration. Before registration, these preliminary acts generate individual liability for the people involved, which ends when the company is registered and these acts are ratified.

The company can be directly incorporated by foreign legal entities, in which case they must grant powers of attorney to individuals to act in executing the public deed of incorporation in Peru. Those powers of attorney must be registered with the public registries. Alternatively, to save time and resources, the company may be incorporated by individuals domiciled in Peru and subsequently transfer 100% of the shares to the final shareholders through a private document.

Companies incorporated in Peru must have a tax identification number (RUC) issued by the National Superintendency of Customs

and Tax Administration (SUNAT) to carry out their business activities. The tax identification number can be obtained in the company incorporation process (before its registration), which entails certain liabilities for the founders. However, the RUC is usually obtained after the company has been registered with the public registries. When applying for the RUC, the company must state the start date of its activities, and it may perform them from that point. In turn, it will be required to comply with all its tax obligations.

Anyone carrying out economic activities in Peru in specific premises must have the corresponding municipal operating license for the premises, which is granted by the local district municipality (in accordance with compatible uses and different regulations).

These are the company incorporation steps:

- Grant powers of attorney to incorporate the company.
- Check that the corporate name is unique.
- Prepare the certificate of incorporation and execute the public deed before a notary public.
- Deposit at least 25% of the company's share capital in a local bank account and get proof of it.
- Register the incorporation with public registries.
- Register at the Single Taxpayers Registry.
- Legalize corporate books.

### **Branches of companies incorporated abroad**

Article 396 of the General Companies Act defines a branch as "(...) any secondary establishment through which a company carries out certain activities within its corporate purpose in a location other than its registered office." Based on this definition a branch is a mere extension of the company that establishes it and, consequently, it lacks its own legal personality, only has permanent representation and enjoys management autonomy in the scope of the activities that its parent company assigns it, in accordance with the powers of attorney granted to its legal representatives.



Therefore, the company (domestic or foreign) that establishes a branch in Peru will have unlimited liability, without admitting an agreement to the contrary, for all the obligations acquired by the branch.

To establish a branch in Peru, the parent company must pass a board or shareholders resolution. That resolution must list (i) the share capital (it does not have to be deposited with a financial institution), (ii) the activities to be carried out within its corporate purpose, (iii) the location of the registered office and (iv) the appointment of a representative in Peru, duly authorized to execute the public deed establishing the branch.

The powers of attorney issued to those representatives can be granted by the parent company in the corporate resolution establishing the branch or in a separate document. In any case, they must also be registered with the public registries.

Any future change in the branch's capital, authorized activities, registered office or permanent representative in Peru and powers of attorney will have to be approved by the parent company's competent corporate body and be registered in Peru.

#### **1.4. Associative contracts**

Article 438 of the General Companies Act defines associative contracts as "(...) those that create and govern participation and integration relationships for a certain business in the common interest of the parties." In other words, these contracts establish collaboration ties between certain parties to carry out a specific purpose, without giving rise to a legal entity. The only formality is that these contracts must be in writing and, therefore, need not be registered in public registries.

Specifically, the General Companies Act establishes two types of associative contracts: (i) silent partnership (*asociación en participación*) and (ii) consortium (*consorcio*). However, any other associative contract that does not adjust to the above categories is allowed.



Under a silent partnership contract, the active partner (*asociante*) grants the silent partners (*asociados*) a share in the profits of the business in exchange for a contribution, without the silent partners participating in its management. Under a consortium contract, all the partners participate actively and directly in a business to obtain a joint economic benefit, with each party maintaining its respective autonomy.

## 1.5. Merger control

The existing merger control regime in Peru seeks to promote effective competition and economic efficiency in the interest of consumers. The regulatory framework, under the supervision of the National Institute of the Defense of Competition and Intellectual Property Protection (“INDECOPI”), comprises (i) Act No. 31112, establishing a prior merger control procedure; (ii) Supreme Decree No. 039-2021-PCM, approving the implementing Regulation of Act No. 31112 (iii) Resolution No. 021-2021-CLC-INDECOPI, approving the Ordinary Notification Form and the Simplified Notification Form; (iv) Resolution No. 022-2021-CLC-INDECOPI, approving the Guidelines for the calculation of notification thresholds; and (v) Resolution 103-2022-INDECOPI, approving the Guidelines on merger assessment.

The following transactions are subject to prior control by INDECOPI:

- Business concentrations: any transaction that implies a transfer or change in the control of a company or part of it, e.g., a merger, an acquisition of control rights, the incorporation of a joint venture and similar modalities.
- Business concentrations that produce effects in all or part of the national territory, including those that are carried out abroad and are linked directly or indirectly to economic agents that carry out economic activities in the country.
- Transactions that meet the following thresholds: (i) the total amount of the sales or annual gross income or value of assets in Peru of the companies involved, during the fiscal year prior to that in which the transaction is notified, is equal to or greater than 118,000 tax units (UIT) (approximately S/584.1 million)<sup>1</sup>; and (ii) the value of the sales or annual gross income or value of assets in Peru of at least two of the companies involved, during the fiscal year prior to that in which the transaction is notified, is equal to or greater than 18,000 UIT (approximately S/89.1 million).

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<sup>1</sup> UIT for 2023 is S/4.950.





The merger authorization procedure may be carried out in two phases, considering the restrictive effects on market competition.

Before prior assessment and *ex officio* review of these transactions, individual or joint consultations may be submitted to INDECOPI's Technical Secretariat. However, the opinions of the Technical Secretariat do not bind the INDECOPI Commission.





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-8368.00

45.6 %

42.5 %

35.7 %

32.9 %

29.2 %

28.5 %

186.33

# 2

## Tax

### 2.1. Income tax

Income tax is levied on:

- the global income obtained by companies resident in Peru;
- the Peruvian-sourced income generated by branches, agencies, or permanent establishments of foreign companies established in Peru; and
- the Peruvian-sourced income received by legal entities resident abroad.

Companies resident in Peru must pay 29.5% tax on their net taxable income and are subject to an additional 5% on the sums presumed to have been paid indirectly to shareholders.

The net taxable income will be the book earnings for the year, adjusted with the additions and deductions envisaged in the tax regulations. To establish taxable income, entities can deduct expenses insofar as they generate or maintain the source of taxable income, and requirements or limits can be applied to deduction of some expenses.

Non-resident companies generally pay 30% on of their Peruvian-sourced income.

Dividends and any other type of distribution of earnings paid by a resident taxpayer to a non-resident entity will be subject to 5% withholding. Companies doing the distribution will be responsible for withholding and paying the corresponding income tax.

### 2.2. Capital gains

Capital gains from selling securities issued by companies incorporated in Peru are subject to income tax.

If the seller is a Peruvian resident, the tax rate will be 5% or 29.5%, depending on whether the seller is an individual or a company, respectively. If the seller is a non-resident, the rate will be 5% or 30%, depending on whether the disposal is carried out in Peru or abroad, respectively.

However, indirectly selling shares, understood as transferring shares issued by non-domiciled residents whose value is determined by the value of companies based in Peru, is considered an event generating Peruvian-sourced income. The tax rate applicable to capital gains obtained in this transaction is 5% or 30%, depending on whether the sale is performed through the Lima Stock Exchange or not.



Both in the event of a direct or indirect disposal, if the listed value is not applicable, the market value of the securities will be the higher value resulting from comparing the transaction value and the value determined by the discounted cash flow method, with few exceptions in which the equity value will be applied.

The capital gains subject to income tax will be calculated by deducting the cost of the transferred assets. For that purpose, if the transferors are non-domiciled residents, they must submit the invested capital certification request to the tax authorities, for which some legal and formal requirements must be met. Otherwise, the cost will be zero. The certification of the cost is not mandatory if the transfer is done through the Lima Stock Exchange.

### **2.3. Personal income tax**

Taxpayers residing in Peru are Peruvian nationals living in the country and foreigners who have been in Peru for over 183 calendar days in any 12-month period.

For resident individuals, income from capital is subject to 6.25% rate on net income, which is established by deducting 20% from the gross income. Income from salaried work is subject to a cumulative progressive scale (8, 14, 17, 20 and 30%). Work income up to 7 UITs (equivalent to S/34,650) is exempt from income tax.

For non-resident individuals getting a salary income, a fixed rate of 30% on net income applies, without deducting the sum equivalent to 7 UITs.



## 2.4. Non-resident income tax

Local entities that pay income to non-resident taxpayers must withhold the income tax at the following rates:

Payment type withholding	Income tax
Dividends or distribution of earnings	5%
Interest on loans between unrelated parties, if they meet certain requirements	4,99%
Interest on loans between related parties	30%
Interest paid by financial institutions or Peruvian banks to foreign beneficiaries for lines of credit used in Peru	4,99%
Royalties	30%
Digital services	30%
Technical assistance	15%
Leasing of vessels or aircraft	10%
Other income	30%

The tax withheld may not be deducted as an expense, except in the case of loans granted by non-resident taxpayers, insofar as the debtor has contractually assumed the obligation to bear the income tax.



## 2.5. General sales tax

The general sales tax is an indirect value-added tax levied on the following transactions at a rate of 18%:

- Sale of goods in the country.
- Provision or use of services in the country.
- Construction agreements.
- The first sale of real estate by builders.
- Import of goods.

For all transactions, the sellers or providers are subject to the general sales tax, except in the case of importing goods or using services rendered by non-resident taxpayers. Exporting goods and services is not subject to the general sales tax if certain conditions are met. The general sales tax paid on buying goods or services can be used as a tax credit against the general sales tax derived from the transactions carried out by the company. It is calculated and paid monthly.

## 2.6. Transfer pricing

In the case of transactions between related parties or from, to, or through tax havens, non-cooperating states or states with a preferential tax regime, the market value will be considered equal to the consideration agreed by independent parties in comparable transactions, following the transfer pricing rules.

The tax authorities will make the adjustments for both the buyer and the seller, even if one of them is a non-resident entity, provided the agreed value results in a lower tax than would have been applied had the transfer pricing rules been used.

## 2.7. Double taxation agreements

Peru has signed treaties with Brazil, Canada, South Korea, Mexico, Portugal, Switzerland and Japan with regard to double taxation of income tax under the model of the Organization for Economic Co-operation and Development (OECD). It is also a member of the Andean Community, which includes Bolivia, Colombia and Ecuador.





	Dividends	Interest	Royalties	Technical Assistance	Digital Services
No DTA	5%	4,99/30%	30%	15%	30%
<b>DTA</b>					
Brazil	10/15%	15%	15%	15%	15%
Canada	10/15%	15%	15%	-	-
Chile	10/15%	15%	15%	-	-
South Korea	10%	15%	15%	10%	-
Mexico	10/15%	15%	15%	-	-
Portugal	10/15%	10/15%	15%	10%	-
Switzerland	10/15%	10/15%	15%	10%	10%

## 2.8. Other taxes

### Excise duty (*impuesto selectivo al consumo, ISC*)

Indirect tax levied on the (i) sale of specific items established by law, including fuel, beer, liquor, and cigarettes, (ii) on importing those products, and (iii) on gambling, including prize draws and raffle. The rates vary depending on the type of good or service.

### Financial transactions tax (*impuesto a las transacciones financieras, ITF*)

A rate of 0.005% is levied on both the credit (deposit) and the debit (withdrawal) of accounts under the control of the Banking, Insurance and Pension Funds Superintendency (SBS). ITF payments are deductible for income tax purposes.

### Temporary net assets tax

This is a tax on net assets as a sign of contribution capacity. Taxpayers generating third category income whose net asset value exceeds S/1,000,000 are required to pay temporary net assets tax at a rate of 0.4%.

It can be used as a credit against the payments on account and income tax annual adjustment payments. If part of the amount paid for the temporary net assets tax is not used in the annual income tax return, a refund may be requested to the tax authorities, which will be processed within 60 business days.

### Property tax

It is levied on the real estate belonging to an individual or legal entity in a certain district. The rate is between 0.2% and 1%, depending on the value of the property as determined by the corresponding authorities. This tax must be paid annually.

### Real estate transfer tax

It is levied on the transfer of real estate for free or for valuable consideration. The rate is 3%, and it is levied on the sales value agreed by the parties or the self-assessment value determined by the municipality of the district where the property is located, whichever is higher, with a 10 UIT discount (S/49,500). This tax must be paid by the buyer.



# 3

## Labor

### 3.1. General hiring characteristics

As a rule, employees are hired on an indefinite basis. In this case, there is no obligation to sign a work contract.

Peruvian law allows fixed term hiring as an exception, provided the specific case is not envisaged in any of the grounds for temporary hiring contained in the law, and written contracts must be signed in each case.

In this framework, labor law establishes new cases in which the regulations consider that there are temporary grounds justifying fixed-term hiring. These cases are:

Contract type	Characteristics
Starting or launching a new activity	<p>The temporary nature of the contract is justified by the uncertainty surrounding the new activity launched. Fixed-term contracts grant the employer a period to assess whether to carry out that activity in the market.</p> <p>For these purposes, a new activity means both starting the new productive activity and subsequently opening new establishments or markets, as well as increasing the existing activities.</p> <p>The maximum term for this type of contract is three years.</p>
Market needs	<p>This type of contract makes it possible to address circumstantial increases in production due to substantial variations in market demand.</p> <p>However, these cannot be foreseeable increases in demand but a temporary and unforeseeable increase. Thus, this type of contract cannot be executed in case of cyclical or seasonal variations.</p> <p>The maximum term for these contracts is five years.</p>
Company restructuring	<p>This relates to the company's need to adapt in case of replacement, extension, or modification of the company activities and, in general, any technological change in the machinery, equipment, installations, production means, systems, methods, and production and administrative procedures.</p> <p>The maximum term for these contracts is two years.</p>
Temporary	<p>It meets temporary needs other than the work center's usual activity, e.g., maintenance. Its maximum term is six months.</p>



<b>Contract type</b>	<b>Characteristics</b>
<b>Cover</b>	<p>It is used to temporarily replace a permanent worker whose work contract is suspended (vacations, leave, or any similar circumstance). It also includes coverage of permanent jobs whose holder must temporarily perform other tasks in the same work center (assignment).</p> <p>The term of the cover contract is the necessary period according to the circumstances.</p>
<b>Emergency</b>	<p>It is executed to cover temporary needs as a result of a fortuitous event or force majeure directly affecting the company. Its term must coincide with the emergency's duration.</p>
<b>Specific project or service</b>	<p>It is used to perform tasks for a previously established temporary purpose other than those corresponding to the organic structure of the company, as is the case with project implementation. Its term will be the period necessary to complete the work or service.</p>
<b>Intermittent contract</b>	<p>It is executed to perform tasks that, due to their nature, are permanent but discontinuous.</p>
<b>Seasonal contract</b>	<p>It is executed to meet the company or establishment's business needs only at certain times during the year and repeated at similar times in each cycle, in accordance with the nature of the productive activity.</p>

The regulations also include an open clause allowing temporary contracts in cases other than those indicated above, provided there are temporary grounds justifying a fixed term contract.

The law does not establish any quantitative limit for hiring staff on a fixed term basis. Therefore, employers can contract the number of workers necessary under this type of contract, provided there are temporary reasons to justify the hiring in all cases.

### **3.2. Possibility of subcontracting**

The system provides three different hiring mechanisms for an employer who needs to hire third parties for productive activities, each with different obligations and burdens for the contracting parties. However, as it happens in Employment Law, choosing the right contract for each case does not depend on the parties' will but on the characteristics of the provision of services, as seen below:

#### **Supplementary or highly specialized labor intermediation services contract**

This type of contract applies when the third party performs a supplementary activity to the company's core business without autonomy, i.e., only moving staff but using materials and resources provided by the company.



The legal system expressly prohibits mere provision of staff to perform core company activities on a permanent basis, while the provision of staff to perform core activities for the company on a temporary basis is only admitted for substitution purposes.

### **Service outsourcing contract**

This contract applies when a third party carries out a comprehensive part of the contracting company's production process (core activity) entirely by itself and at its own risk. In this case, the third party acts autonomously and has its own technical, administrative, and financial resources.

Service outsourcing can be used for performing the contracting company's main activities. However, outsourcing of core business activities is prohibited, except for highly specialized works or services.

In this regard, core business activities are determined based on the following criteria, among others:

- The corporate purpose
- What identifies the company in relation to its end customers
- The differentiating element of the company within the relevant market
- The activities that generate added value for its customers
- The activity that usually brings in the most revenue

### **Civil third-party service contract**

Given the restriction established in the law on outsourcing contracts (which can only be used to perform main but not core activities), a civil third-party service contract is required when a third-party is tasked with performing a supplementary activity in full, and it does so autonomously, using its own technical, administrative and financial resources. This contract will not be considered labor intermediation or outsourcing.

## **3.3. Legal benefits**

### **Minimum wage**

All workers are entitled to a minimum wage, which is currently USD 280 or S/1,025<sup>2</sup>. It can be adjusted periodically by the Peruvian government.

### **Working hours**

The maximum workday in Peru is 8 hours a day or 48 hours a week. It is possible to establish atypical or cumulative days, as long as the legal maximums are respected.

### **Family allowance**

This benefit is granted to workers whose remuneration is not regulated by collective bargaining if they have one or more dependent children under the age of 18. It is equivalent to 10% of the minimum wage.

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2 Tia At an exchange rate of 3.66.



## Legal bonuses

Workers are entitled to two bonuses per year: one in July (national holidays) and another in December (Christmas). Each bonus is equivalent to one month's pay.

The legal bonuses are exempt from any provision, contribution, and discount of any nature, e.g., social health insurance and private pension system, except for the discount for fifth category income tax and those authorized by the worker.

The employer must pay the worker directly 9% of the value of this benefit if the worker is registered with the public health system (EsSalud) or 6.75% if registered with a health care entity (*Entidad Prestadora de Salud*, EPS).

## Compensation for time worked

All workers are entitled to compensation for time worked if they work at least four hours a day.

This benefit is deposited with the bank or financial institution selected by the worker every six months and is equivalent to approximately 8.33% of the worker's total half-yearly remuneration in cash or in kind.

The compensation for time worked and the corresponding interest are not subject to taxes, including income tax. The worker may access 100% of the surplus of four gross pays from their individual compensation for time worked accounts. When the professional relationship ends, the worker can withdraw the whole sum deposited and the corresponding interest.

## Profit sharing

Peruvian labor law establishes a system for sharing the profits of companies with over 20 workers on payroll and whose activities generate third category income.

Employers share their profits by distributing a percentage of the yearly pre-tax income, meaning the workers' share is not calculated on the employer's earnings but on its annual income, calculated under the income tax regulations.

The percentage that the employer must distribute among its workers ranges between 5% and 10%, depending on the employer's activity as follows:

- For fishing industrial, and telecommunications companies: 10%.
- For mining and trade (wholesale and retail) companies and for restaurants: 8%.
- For all other companies: 5%.

The share in profits must be distributed within 30 calendar days of the deadline established in the legal provisions for submitting the annual sworn income tax return.

## Overtime

Granting and working overtime is voluntary. It is paid at a premium to be agreed with the worker. This premium cannot be less than 25% per hour on top of the normal rate for the first two hours and 35% for the following hours. Management and workers not subject to immediate oversight are not entitled to this benefit

## Vacation

After one year of service, if the respective work time is accrued, the worker is entitled to one month's vacation. The law envisages the reduction, advance and accumulation of vacation, as well as vacation compensation for not having taken the time off during the year following the year work time was accrued.

The scheduled time off can be defined by agreement between both parties. However, if there is no agreement, the employer can decide according to operational needs.

## Non-working holidays

The law establishes that all workers are entitled to paid time off on holidays. In Peru, these holidays are January 1 (New Year), movable holidays (Holy Thursday and Good Friday), May 1 (Labor Day), June 29 (Feast of Saints Peter and Paul), July 28 and 29 (National Holidays), August 6 (Battle of Junín), August 30 (Feast of Saint Rose of Lima), October 8 (Battle of Angamos), November 1 (All Saints' Day), December 8 (the Immaculate





Conception), December 9 (Battle of Ayacucho), and December 25 (Christmas).

Remuneration for non-working holidays is equivalent to the remuneration for a normal day of work and its payment is directly proportional to the number of days worked during the week.

The work carried out on non-working holidays without compensatory time off will result in payment of the corresponding compensation for the work carried out with a 100% premium. If both the worker and the employer agree on an alternative day off the worker is only entitled to receive the usual remuneration corresponding to the day of work.

#### **Life insurance**

All workers are entitled to life insurance paid by the employer from the start of the labor relationship. The law regulates the characteristics of this insurance. The premium is subject to agreement between the employer and the insurance company.

### **3.4. Social security contributions levied on remuneration**

#### **Social health insurance**

Social health insurance is mandatory for all workers. This contribution is borne by the employer and equal to 9% of the worker's salary.

#### **Pension system contributions**

Workers can choose between the national pension system or the private pension system.

In either case, the employer will discount a contribution to the pension system of their choice from the workers' remuneration. The value of the contribution is 13% of the remuneration in the national pension system and approximately 12.50% (on average) of the remuneration in the private pension system.

We highlight that national and foreign workers are subject to the same social security regime and make the same contributions.

### **3.5. Termination of the work contract**

Peruvian labor law envisages the following grounds for terminating work contracts:

- Death of the worker or employer if the latter is an individual
- Voluntary resignation or retirement
- End of the work service, the condition subsequent, and the fulfillment of the periods envisaged in the temporary hiring
- Mutual agreement
- Absolute permanent disability
- Retirement
- Dismissal for just cause (envisaged the regulations)
- Termination due to objective causes

#### **Just causes for dismissal**

The cases justifying dismissal are expressly indicated in the law. They can relate to the worker's capacity or conduct.

#### **Compensation for arbitrary dismissal**

When the worker is dismissed without just cause, alleging a cause that cannot be proved or without following the dismissal procedure envisaged by the law, the worker (i) is entitled to receive compensation for arbitrary dismissal or (ii) may opt to request reinstatement.

The sum of the compensation is determined as follows:

- **For open-ended contracts:** One and a half monthly pays for each year of service, capped at 12 pays. Fractions of a year are counted by twelfths and thirtieths.
- **For fixed term contracts:** One and a half monthly pays for each month remaining until the date envisaged for the termination of the contract, capped at 12 pays.

### 3.6. Teleworking

In January 2023, Teleworking Act No. 31572 came into force as a consequence of the spread of COVID-19. Teleworking is a modality that replaces “remote working” and seeks to regularize work outside the workplace by implementing specific provisions and obligations, especially in occupational safety and health matters, including the following:

- The agreement to change the work modality must be in writing and have the approval of both the employer and the worker.
- The workplace will be defined by the teleworker and notified to the employer, who must verify the conditions of the workspace to identify the risks to which the teleworker is exposed.
- Unless otherwise agreed, the employer must provide or compensate the employee for working tools and conditions (such as computers, cell phones, electricity and internet services).
- For the purposes of protecting teleworkers' privacy, it is established that the employer cannot access teleworkers' private

communications and documents, record or capture their image and voice without their express consent, nor enter their usual telework place without prior authorization.

On February 28 of this year, Supreme Decree No. 002-2023-TR, approving the implementing Regulation of the Teleworking Act, was published in the official gazette “El Peruano.” It provides as follows:

- In the absence of a defined term, the Telework contract will be deemed permanent.
- The employer may change the modality unilaterally for duly justified reasons. The employer must notify this change to the employee at least 10 working days in advance.
- The employer must answer modality change requests from employees within 10 working days. In the absence of a timely answer, the request will be deemed approved.

Companies implementing this modality had to meet these requirements before April 28, 2023.



### 3.7. Employment of foreign personnel

The Foreign Workers Employment Act and its implementing regulations govern the employment of foreign workers in Peru. Foreigners must not constitute more than 20% of the employer's entire staff, and their remuneration must not exceed 30% of the total payroll. However, employers may request an exception for specific cases.

The employment of foreign personnel is subject to certain requirements, including the following:

- Employment contracts for foreign employees must be in writing and have fixed terms of up to three years, renewable successively for equal periods.
- If the Labor Authority approves the employment contract, the employee's immigration status may be changed from a tourist or business visa to a work visa with the Immigration Office.
- Once the work visa is granted, the employee may be issued a foreigner's card and may begin providing services to the local company.
- Foreigners from Mercosur member countries are not subject to the Foreign Workers Employment Act and its regulations, but to the General Labor Act.

### 3.8. Collective Labor Relations

- **Workers' unions:** Workers have the right to form unions, which at the company level must have at least 20 members. Membership is voluntary.
- **Collective bargaining agreements:** These are signed between the employer and the union to regulate working conditions. If the majority of the personnel joins the union, the collective bargaining agreement will apply to all workers in the company, regardless of their union membership. However, if only a minority of the personnel has joined the union, the agreement will apply only to union members.
- **Right to strike:** It is constitutionally enshrined and consists of a collective suspension of work by those involved. The strike must meet certain legal requirements and may be declared illegal. The employer has the duty to recognize the exercise of this right if it complies with the legal formalities. The only excluded workers are managers, workers in positions of trust, and those who perform minimum services in the company.





# 4

## Data protection

### 4.1. Legal framework

In Peru, the legal data protection framework is provided by Data Protection Act 29733 (*Ley de protección de datos personales, LPDP*) and its implementing regulation, approved by Supreme Decree No. 003-2013-JUS. The purpose of the LPDP is to guarantee the fundamental right to protection of personal data through their proper processing. The National Data Protection Authority, a body of the Peruvian Ministry of Justice, oversees compliance with the Data Protection Act.

The LPDP is applicable to the personal data stored or to be stored in publicly and privately managed personal data banks, whose processing is performed in the national territory.



## 4.2. Main obligations

The owners of personal data banks have the following obligations, among others:

- Register the creation, modification and cancellation of the personal data banks at the National Data Protection Registry.
- Obtain the personal data owner's prior, informed, express and categorical consent to process them.
- Establish a privacy policy guaranteeing the data subjects' right of information, including the existence of the data bank, disclosure of any cross-border transfer of data, and the purpose and intended uses.
- Establish a simple procedure guaranteeing, e.g., the right of access, the rights to accuracy and erasure, and the right to object.
- Adopt the security measures necessary to prevent any processing contrary to the LPDP or its regulation, including falsifying, losing and changing information, intentionally or not, whether the risks stem from human action or the technical means used.

In October 2022, the Permanent Secretariat of the Ibero-American Data Protection Network approved the "Guide for the Implementation of Model Contractual Clauses for the International Transfer of Personal Data," based on international standards. This document aims to ensure and facilitate compliance with the requirements for personal data transfers from countries belonging to the Network, such as Peru.











# 5

## Public procurement

### 5.1. Legal framework

Under article 76 of the Peruvian Constitution, any public body using public funds or resources is subject to a special public procurement regime.

In general, procurement of works, goods, and services by state entities is regulated by Peruvian Public Procurement Act No. 30225 and its implementing regulation, approved by Supreme Decree No. 344-2018-EF, and by various directives issued by the Public Procurement Supervisory Agency (*Organismo Supervisor de las Contrataciones del Estado*, OSCE).

Likewise, certain procurement for infrastructure projects carried out by public entities are subject to other public procurement regimes. This is the case of public-private partnerships governed by Legislative Decree No. 1362, on investment promotion through public-private partnerships and government-owned assets (*Proyectos en Activos*) (PPP Act), and its implemented regulation approved by Supreme Decree No. 240-2018-EF. Another example is works for taxes, governed by Act No. 29230 (OxI Act) and its implementing regulations approved by Supreme Decree No. 210-2022-EF.

Finally, a public procurement regime frequently used by the Peruvian State in recent years is Government-to-Government agreements (G2G). According to the twenty-first final complementary provision of the Public Procurement Act, this regime is governed by international trade regulations and international law rules and principles.

Below we describe the main aspects of these public procurement regimes.

### 5.2. Public Procurement Act regime or collaborative asset management

The Public Procurement Act regime lays down the regulatory framework for collaborative asset management, also referred to as “public procurement,” through which a state entity can contract by means of a public tender, public bidding, simplified award, selection of individual consultants, price comparison, electronic reverse auction, direct procurement, among other selection procedures governed by the above regulations.

The Public Procurement Act excludes several procurement modalities from its scope. Without prejudice to other public procurement regimes referred to below, these exclusions include Foreign Service contracts for operation and management purposes outside the national territory

(not subject to OSCE's supervision); banking and financial contracts arising from a financial service, including all financial accessory services except for insurance and financial leasing, other than those under Legislative Decree No. 1437 on Public Indebtedness (not subject to OSCE's supervision); and procurement with providers not resident in the country when the following requirements are met: (i) impossibility of procurement under the methods of the Public Procurement Act (i.e., public bidding, public tender); or (ii) the higher value of the provisions is realized abroad (subject to OSCE's supervision).

Contracts governed by the Public Procurement Act must include clauses relating to guarantees, anti-corruption, dispute resolution and termination of contract due to breach.

### **Public Procurement Supervisory Agency (OSCE)**

OSCE is a specialized technical agency attached to the Ministry of Economy and Finance. Its purpose is to promote compliance with the above public procurement regulations.

OSCE's main functions are (i) to ensure and promote efficient procurement by public entities under the applicable regulatory parameters, maximizing the value of public funds and results-based management; (ii) to carry out *ex officio* supervision on a random or selective basis, or both, and, on request, to supervise public procurement procedures under the Public Procurement Act and its implementing regulations, and to order the adoption of measures, including certain cases excluded from the scope of the Public Procurement Act; (iii) to manage and operate the National Providers Registry (*Registro Nacional de Proveedores*, or "RNP"); and (iv) to issue directives, standardized documents and guidance on public procurement.

### **National Providers Registry**

To be a participant, bidder, contractor, or subcontractor of the state, it is an essential requirement to be registered in OSCE's RNP. Registration in the RNP is indefinite subject to certain regular (legal and financial) information updates.

The RNP includes the following categories: (i) suppliers of goods; (ii) service providers; (iii) works consultants; and (iv) works executors.

### **Electronic Public Procurement System**

The Electronic Public Procurement System (SEACE) is the online system for exchanging information, communicating public procurements and executing electronic transactions. The SEACE registers all the documents linked to the procurement process, including calls, terms of reference, contractual amendments, awards, and conciliations, among others.

Entities are required to use the SEACE for procurement, regardless of the amount or source of financing

### **5.3. Public-private partnerships**

The Public Procurement Act and its implementing regulations define public-private partnerships as private investment participation under long-term contracts involving the state, through a public authority and one or more private investors.

For these purposes, private investors must comply with a series of legal, technical and economic-financial requirements.

### **5.4. Works for taxes**

The works-for-taxes mechanism involves the execution of agreements between private companies and public entities for the financing or implementation (or both) of investment projects, among other types of special investments, as well as related operation or maintenance activities.

The Oxl Law and its implementing regulations establish the specific requirements to participate in public procurement under this regime.

### **5.5. G2G Agreements**

G2G Agreements are a procurement mechanism by virtue of which a government contracts goods, services or works to be rendered by another government, according to the agreed mechanisms and conditions. This regime covers a wide variety of objectives and benefits for both governments.

The twenty-first final complementary provision of the Public Procurement Act establishes the general legal guidelines.

The regulations applicable to G2G Agreements in Peru have not established specific requirements for the participation of companies in these types of projects. G2G Agreements may include (i) the conditions to be fulfilled by the contractors implementing the G2G Agreement; and (ii) the State's responsibility to implement the relevant project, including project requirements for contractors. Our experience shows that potential contractors of infrastructure projects under G2G Agreements have extensive technical experience in infrastructure works and a solid economic-financial base.





# 6

## Energy

The 1992 Electricity Concessions Act lifted the restrictions on private investment and eliminated government reservations. This Act was aimed at (i) promoting an investment process that could increase generation capacity, including better access and extending national coverage; and (ii) creating a tariff scheme to enhance technical and economic efficiency.

The Peruvian energy sector has become more competitive as a result of (i) a market liberalization and privatization process involving various public companies; (ii) the second-generation reforms implemented in 2006; and (iii) numerous public tenders for increasing power generation and transmission capacity.

### 6.1. Main characteristics

The market is segmented into three main activities other than commercialization: (i) power generation; (ii) transmission; and (iii) distribution, which can be provided by natural and legal persons, whether national or foreign. Other main characteristics include that:

- There is a technical system operator, the National Interconnected System (“SEIN”), which also operates and manages the spot market;
- The Peruvian Government has actively promoted private investment;
- The open access principle became well-established; and
- Companies are (a) free to set generation prices (electric power and energy) for the supply of electricity to free customers; and (b) subject to feed-in schemes for public customers.

In Peru, any of the following activities require a final concession granted by the Ministry of Energy and Mining or the competent regional government, as appropriate:

- Generation using water resources for an installed capacity greater than 500 kW.
- Transmission, only if the facilities affect government-owned assets or require easements.
- Electricity distribution, when it qualifies as a public service if demand exceeds 500 KW.
- Generation using renewable energy resources (“RER”) for an installed capacity greater than 500 KW.

Also, thermoelectric generation activities require authorization if the installed capacity exceeds 500 kW. These authorizations are granted for an indefinite term.

## 6.2. Market agents

Aside from generation, transmission and distribution companies, there are two types of electricity users:

- **Regulated users:** their demand is below 200 kW, and they are subject to feed-in tariffs regulated by the electricity regulatory agency OSINERGMIN.
- **Free users:** their energy consumption is not subject to regulated prices, and they are free to choose electricity deals by entering into contracts with generators and distributors. Consumers with a demand over 2.5 MW will qualify as free users, and those with a demand larger than 200 kW but not exceeding 2.5 MW can choose to become free users.

The main entities and authorities in the Peruvian energy sector are the following:

- **The Ministry of Energy and Mining** is the governing and rulemaking entity in the energy industry. It is responsible for general policymaking and rulemaking in the energy sector and for granting, monitoring, terminating and expiring authorizations and concessions for activities including electricity generation, transmission and distribution.
- **The System Economic Operation Committee** (“COES”) is a private non-profit organization with public legal personality comprising all agents of the National Interconnected System (“SEIN”), i.e., generators, distributors and free users and whose decisions are binding on its members. The main purpose of COES is to coordinate the interconnected system’s short, medium and long-term operations to achieve the lowest possible operating costs while guaranteeing the system’s security and optimizing the use of energy resources.

- The **Supervisory Commission for Investment in the Energy and Mining Sector** (“OSINERGMIN”) is the regulatory and supervisory body responsible for monitoring energy companies’ activities and for ensuring compliance with the applicable legislation and technical standards. OSINERGMIN is also responsible for setting the tariffs on regulated activities.
- The **Agency for Environmental Assessment and Enforcement** (“OEFA”) is a specialized technical body under the Ministry of the Environment responsible for environmental control and enforcement.
- The **Private Investment Promotion Agency of Peru** (“PROINVERSIÓN”) is a public body responsible for implementing public tender procedures.
- **INDECOPI** ensures compliance with antitrust and unfair competition law and enforces Antitrust Merger Review Act No. 31112.

## 6.3. Power purchase mechanisms

There are various power purchase mechanisms, the most remarkable being::

- **Spot transactions at marginal cost:** generators are not forced to enter into these deals. They can choose to inject all their power into the spot market at the applicable market price.
- **Back-up contracts:** generators can enter into energy and power back-up contracts with each other to meet their contractual commitments.
- **Bilateral contracts** with free users at unregulated prices: generation prices (energy and electric power) are freely set.
- **Bilateral contracts with distributors at regulated prices:** entered into between generators and distributors. The energy is supplied to regulated users, so the maximum price (cap) is equal to the bus bar (regulated) price.



- **Bilateral contracts with distributors at fixed final prices resulting from bids under Act 28832:** these contracts stem from the bids conducted by distributors under OSINERGMIN's supervision.

## 6.4. PROINVERSIÓN bids

Act 28832, approved in 2006, provided a remuneration scheme for facilities included in the Guaranteed Transmission System ("SGT") primarily aimed at creating stable and predictable revenues for the transmission concessionaires, allowing for SEIN's orderly growth. Remuneration of SGT facilities, tendered by PROINVERSIÓN, is made up of a tariff base determined by OSINERGMIN and must include three items:

- Return on investment, equal to the annual return for a 30-year period annualized at a 12% rate.
- The facilities' operation and maintenance costs ("O&M costs").
- The relevant settlement between the previous year's authorized tariff base and the amounts actually collected.

The return on investment and the O&M costs included in the tariff base will be those of the winning bid in the public tender held for the construction of SGT facilities. The bidders thus propose the value of both tariff base items. These contracts are entered into under a build, own, operate and transfer ("BOOT") scheme, and they are periodically awarded by PROINVERSIÓN in accordance with the Transmission Plan.

## 6.5. Renewable energy

In line with its National Energy Policy and international emission reduction commitments, Peru's development framework for renewable energy resource plants ("RER") is aimed at increasing the share of renewable energy sources in the energy matrix, which is currently dominated by large hydroelectric and thermal plants (using natural gas from the Camisea field in Cusco). The plants qualifying as renewable energy facilities have (i) a right to priority dispatch, since they have no variable costs; (ii) priority access to the grid; and (iii) tax benefits including accelerated depreciation and early repayment of the general sales tax. Under this renewable energy promotion framework, there were four on-grid and one offgrid auctions, allowing for executing 65 projects, although not all of them ended up operating in the market.

However, the implementation of renewable energy projects in Peru currently does not depend on any promotion framework or auction because of the significant decrease in production and storage costs, the increasing role of corporate social responsibility encouraging companies to enter into renewable energy deals, the increase in marginal costs, the promotion of energy efficiency and distributed generation solutions, the social and environmental benefits and Peru's favorable weather conditions.

In sum, except for solar power, which still has a regulatory limit preventing power purchase agreements ("PPAs") in the free and regulated market under the same conditions as any other technology, there is a significant development of renewable projects due to market competitiveness. However, there are (i) two legislative projects that could significantly increase contracting possibilities for all RERs, including solar; as well as (ii) a regulatory project that could significantly boost the development of Distributed Generation, to be approved during 2023.





# 7

## Conflict resolution: Arbitration

The preferred mechanism of the private sector in recent decades has been arbitration. The Legislative Decree regulating arbitration, Legislative Decree No. 1071 (Peruvian Arbitration Act), establishes that all the disputes on unrestricted matters, as well as those that the law, treaties or international agreements authorize can be submitted to arbitration.

The total competence and independence of the arbitrators when resolving on the substance of a dispute is recognized, provided the parties to a specific legal relationship so decide by executing an arbitration agreement. However, the Peruvian Arbitration Act recognizes that ordinary judges can assist in examining evidence and adopting interim measures. Furthermore, it establishes that the ordinary courts have competence to enforce the award, hear the appeal for award annulment and recognize and enforce foreign awards.

### 7.1. National and international arbitration

Peru recognizes both national and international arbitration. Under the Arbitration Act, the arbitration is international if it meets any of the following requirements:

- The parties have their registered office in different states when entering into the arbitration agreement;
- The place of arbitration is outside the state where the parties have their registered office or
- For parties with registered office in Peru, the place of the fulfillment of a substantial part of the obligations under the legal relationship is outside the national territory.

We highlight that Peru has signed and ratified the 1965 Convention on the Settlement of Investment Disputes (ICSID Convention); therefore, subject to certain conditions, ICSID arbitration can be applied by foreign investors.

## 7.2. Ad hoc and institutional arbitration

Arbitration can be institutional or ad hoc. It is institutional when it is organized and managed by an arbitration institution. In Peru, the main arbitration institutions are the Lima Chamber of Commerce's Arbitration Center, the Pontificia Universidad Católica del Perú's Conflict Resolution and Analysis Center, and the American Chamber of Commerce of Peru's Arbitration Center. Arbitration is ad hoc when it is led by the arbitration tribunal itself.

## 7.3. Arbitration proceedings in which the Peruvian state is a party

On January 23, 2020, Emergency Decree 020-2020 amending the Arbitration Act entered into force, establishing certain provisions applicable to arbitration proceedings in which the Peruvian state is a party. In these cases, the arbitration is institutional, and it can be ad hoc when the amount of the dispute does not exceed ten UITs (tax units).

Likewise, Emergency Decree 020-2020 establishes that, when the Peruvian state is the party affected by an interim measure, an injunction bond will be required for a value that cannot be lower than the sum of the security on faithful compliance with the agreement from which the dispute arises. The injunction bond can be an unconditional bank bond or a joint and several financial bond automatically enforceable in favor of the affected public entity for the duration of the arbitration proceedings.

The arbitration proceedings may be declared abandoned if they are not pushed forward for four months. This declaration can be *ex officio* or requested by a party. If the arbitration is institutional, this declaration is made by the General Secretariat of the Arbitration Center. If the arbitration is ad hoc, the declaration is by the sole administrator or the chair of the arbitration tribunal.

The declaration of abandonment of the arbitration proceedings prevents initiating another arbitration with the same intention

for six months. If the abandonment is declared for the second time between the same parties and with the same intention, the right expires. This is relevant as, when the Public Procurement Act applies, the state will enforce the application of the limitation periods envisaged in its favor.

With regard to the confidentiality and disclosure of arbitration proceedings, it was established that arbitration proceedings and the award will be public once the arbitration proceedings have ended. The reserve and confidentiality will only be maintained in the exceptions established in the transparency and access to public information rules.

Emergency Decree 020-2020 only applies to domestic arbitration proceedings. It will not apply to investment arbitration proceedings in which the Peruvian state is a party.



## 7.4. Ex post judicial control

There is no dual instance in Peru that allows the substance of an award to be reviewed. Although there is subsequent judicial control through the appeal for annulment, it can only be filed in the following cases:

- The arbitration agreement is non-existent, null, voidable or ineffective.
- One of the parties has not been duly notified of the appointment of an arbitrator or of the arbitration proceedings, or it has not been able to assert its rights for any other reason.
- The composition of the arbitral tribunal or proceedings have not been aligned with the agreement between the parties or the applicable arbitration regulations.

- The arbitration tribunal has resolved on matters not submitted to its decision.
- The arbitration tribunal has resolved on matters not susceptible to arbitration, or the award is contrary to international public order (the latter in the case of international arbitration).
- The dispute has been decided outside the period agreed by the parties.

The appeal for annulment is resolved by declaring the validity or invalidity of the award. Under the Arbitration Act, it is prohibited, under liability, to state a position on the substance of the dispute or the content of the decision and to describe the criteria, motivations or interpretations presented by the arbitration tribunal.



An amendment introduced by Emergency Decree No. 020-2020 in relation to the award annulment appeals is that, when the state is a party and the award is annulled by the Judiciary, any of the parties can discharge the arbitration tribunal or withdraw the appointment of the arbitrator it designated without stating cause. After an award is annulled, any of the parties can be required to re-form the arbitration tribunal. Statistically, it is highly likely that this party will be the state.

## 7.5. Recognition and enforcement of international arbitral awards in Peru

The Arbitration Act considers foreign awards those issued in a place outside Peruvian territory. They will be recognized and enforced in the country in accordance with the treaties on recognition and enforcement of arbitral awards to which Peru is party. Peru has signed and ratified the following instruments, among others:

- The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, approved in New York on June 10, 1958.

- The Inter-American Convention on International Commercial Arbitration, approved in Panama on January 30, 1975.
- The Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards of 1979.

Unless the parties have agreed otherwise, the applicable treaty will be the most favorable to the party requesting the recognition and enforcement of a foreign award.

## 7.6. Arbitration in the framework of public procurement

The Public Procurement Act has established that the conflict resolution methods in the framework of public procurement are conciliation (as a preliminary mechanism) and arbitration, in accordance with the agreement between the parties. The parties can also submit their disputes to a Dispute Resolution Board as provided in the respective contract. Its decision is binding for the parties and does not restrict the possibility to resort to arbitration.





Conciliation must be requested or arbitration initiated before the applicable limitation period has elapsed, which will depend on the type of remedy sought under the Public Procurement Act and its regulation. Most limitation periods are 30 business days after the event triggering the claim.

Disputes relating to the following cannot be submitted to arbitration:

- The decision of the entity or the General Comptroller of the Republic to approve the execution of additional provisions or not.
- Undue enrichment or enrichment without cause.
- Payment of compensation.
- Any other deriving from or caused by the lack of approval of additional provisions or their partial approval by the entity or the General Comptroller of the Republic, as applicable.

The Judiciary will be the sole competent jurisdictional body to resolve disputes on the above matters. Any other agreement to the contrary is invalid.



With regard to filing the award annulment appeal, the contractor will be required to submit a joint and several, unconditional, automatically enforceable bank bond in favor of the entity. Its validity must not be less than six months, renewable for the duration of the appeal process.

If the appeal for annulment is dismissed, the letter of guarantee is delivered to the entity to be enforced. Otherwise, it is returned to the contractor, under liability.

In addition to the cases described in section 7.4 above, the parties can request the annulment of the award if the sole arbitrator, the arbitral tribunal or proceedings in general are not aligned with the Public Procurement Act and its regulation. This is only true if that circumstance was expressly claimed before the sole arbitrator or arbitration tribunal by the affected party and was dismissed. If that circumstance constituted grounds for disqualification the annulment is only appropriate if the affected party duly formulated the respective challenge, and it was dismissed.

## 7.7. Arbitration in the framework of public-private partnerships

Legislative Decree No. 1362 regulating the Promotion of Private Investment through Public-Private Partnerships and Mechanisms Promoting Private Investment in Government-owned Assets (*Proyectos en Activos*) and its regulation, approved by Supreme Decree 240/2018-EF, establish that arbitration is the mechanism for resolving disputes in the framework of performing public-private partnership agreements.

In the direct engagement phase, public-private partnership agreements can include a clause to allow the intervention of a neutral third party known as "*amiable compositeur*." Its role is to propose a formula to resolve the dispute that, if accepted by the parties in full or in part, has the legal effects of a settlement. The parties can also submit their disputes to a Dispute Resolution Board in accordance with the respective agreement. Its decision is binding for the parties and does not restrict the power to resort to arbitration.

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