## CHAPTERS

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INTRODUCTION

Peru’s sustained economic growth over the past three decades, bolstered by the implementation and development of a reliable economic and legal framework, offers the stability that every foreign investor needs. This stability has encouraged public and private investment, whose increase is reflected in the proliferation of investment projects in various economic sectors of the country and in the considerable increase in the income of small, medium and large companies.
However, this sustained growth found a pause in 2020. The entire world—and with it their economies—has been paralyzed as a result of the Covid-19, a pandemic that is testing the entire international system and, in our case, our financial and macroeconomic strength. The responses of support and confidence of foreign investors for Peru have been quick and clear, showing the respect gained in these years.

So far, the country has responded vigorously by deploying all of its economic artillery, including the implementation of leading multi-million dollar rescue programs in the region. Such is the case of Reactiva Perú—more than S/ 60,000 million or USD 18,000 million approximately—and the Mipyme Fund, as well as the granting of social bonds, an international issue of sovereign bonds for USD 3,000 million at historical rates, a loan from the International Monetary Fund for USD 11,000 million, among other economic relief measures that seek to contain the attacks of this pandemic.

Leaving this parenthesis aside, we must highlight that, in addition to the macroeconomic stability achieved to date and its welcoming framework for foreign investment, the unmatched natural wealth of our territory is added. Its long coastline boasts one of the best seas in the world for fishing; its land is ideal for agribusiness; its mineral-rich mountain range makes us one of the largest producers of copper, silver and gold on the planet; and its jungle, still to be developed, is the cradle of resources as vast as itself. For all of the
above, Peru has become one of the countries by excellence for investing in Latin America.

To position itself in an increasingly competitive and demanding globalized market with clear rules of the game, Peru has formed trade alliances and signed economic treaties such as the Pacific Alliance - together with Mexico, Colombia and Chile - as well as different bilateral agreements with countries of the five continents.

The legal team at Hernández & Cía. Abogados has prepared this document in order to present the general legal framework of several of the essential aspects that a foreign investor must consider when evaluating our jurisdiction, such as the general foreign investment regime, applicable corporate structures, customs, labor and tax rules required to start businesses in Peru. In addition, we include a general explanation of the mining sector and the main rules for conflict resolution. We are aware that our effort is still small, and that there are several important sectors to present. For this reason, we are committed to expanding the content of this guide for the benefit of its readers.

Finally, it is essential to point out that each business project must be analyzed in a particular way to determine what the ideal legal framework for its optimal development is. Consequently, this document should not be taken as a legal opinion, but merely as a business guide.
FOREIGN INVESTMENT REGIME
FOREIGN INVESTMENT REGIME

Peru has established a stable and attractive legal framework for private national and foreign investment in order to attract financial and technological resources required to develop vast natural resources and diverse potentialities existing in the country.

1. CONSTITUTIONAL PROVISIONS

The Constitution of 1993 includes provisions on essential principles to guarantee a favorable juridical framework for the development of private sector investment, and foreign investment in particular. Some of them are:

- Free private initiative exercised in a social market economy and economic pluralism.
- Freedom of work and to engage in business, trade and industry.
- Definition of the subsidiary role of the State in the economic activity.
- Free competition and prohibition of all restrictive practices and the abuse of dominant or monopolistic positions.
- Freedom to engage workers.
- Powers of the State to establish guarantees and grant securities.
- National treatment of foreign investment.
- Possibility to submit controversies arising from the contractual relationship with the State to national or international arbitration.
- Freedom to hold and dispose foreign currency.
- Inviolability of property and establishment of exceptional causes for expropriations, previous cash payment of a fair-value indemnity; application of equal treatment on taxation matter; and the express acknowledge that no tax may have confiscating effects.
The State guarantees the legal stability to foreign investors and to the entities hosting the investments.

2. LEGAL FRAMEWORK

The legal framework governing foreign investments in Peru is based on and treated as a national investment. Foreign investments are allowed, without restrictions, in most economic activities. No prior authorization is required for foreign investments; acquisition of national investors interests is fully allowed, through stock exchange or any other mechanism.

As to ownership, foreign individuals or corporate bodies are in the same conditions as the locals. Nevertheless, foreigners may not acquire mines, lands, forests, water, hydrocarbons, energy sources, within 50 kilometers from the borders, except in case of public necessity, expressly declared by the Government.

Foreign investment may exist in any income-generating activities, established by Law, under any of the following modalities:

- Foreign Direct Investment, as contribution to a company’s equity.
- Contributions through contractual joint ventures.
- Investment in goods and properties located within the national territory.
- Portfolio investments.
- In intangible technological contributions.
- Any other investment modality contributing to the development of the country.

3. BASIC RIGHTS OF FOREIGN INVESTORS

- Right to receive non-discriminatory treatment than to national investors.
- Freedom to conduct commercial and industrial activities and to perform any import and export operations.
- Right to expatriate profits or dividends, previous payment of the applicable taxes.
• Right to use the most favorable exchange rate existing in the market for any exchange operation.
• Right to free repatriate the invested capital, in case of sale of shares, reduction of capital or total or partial liquidation of investments.
• Non-restricted access to domestic loans, under the same conditions as the national investors.
• Free acquisition of technology and free remittance of royalties.
• Freedom to acquire shares of national investors.
• Possibility to acquire insurances for investments.
• Possibility to execute Legal Stability Agreements with the State for securing their investment in the country.

4. LEGAL STABILITY AGREEMENTS

The State guarantees the legal stability to foreign investors and to the entities hosting the investments, through the execution of agreements with a law-contract status and abide by the general provisions on contracts established in the Civil Code.

a. Guarantees granted by the State to Foreign Investors
• Equal treatment, by which the national legislation does not discriminate investors participating in enterprises, due to their status as foreign person.
• Stability of the Income Tax System in force when the agreement is closed.
• Stability of the system of free availability of foreign currency and remittance of profits, dividends and royalties.

b. Guarantees granted by the State to the entities receiving the investment
• Stability of the systems of labor engagement in force when the agreement is closed.
• Stability of the system of export promotion applicable when the agreement is closed.
• Stability of the Income Tax System.
MOST USED CORPORATE STRUCTURES

The General Corporations Law (Law No. 26887) regulates the different types of companies that exist in Peru. It also regulates other legal entities used to channel foreign investment into the country, such as branches and collaborative structures like joint ventures.

Corporations (sociedades anónimas) are the most used corporate scheme in Peru.

COMPANIES

Of all the corporate structures, corporations and partnerships are the most used by investors in the country.

CORPORATIONS

Corporations (sociedades anónimas) are the most used corporate structures in Peru, characterized by the relevance given to capital.

In a corporation, shareholders make capital contributions to the company in exchange for shares, and it is these contributions that configure the rights of the shareholders regarding the company.

Likewise, corporations are characterized by establishing a liability of the shareholders limited only to the value of their contributions.

Profits in corporations are distributed as dividends among the shareholders in proportion to their participation in the capital stock, unless otherwise stated in their bylaws.
The General Shareholders’ Meeting is the supreme corporate body of the company, in which the shareholders adopt the agreements that the law and the bylaws confer on them. The administration of the corporation oversees the Board of Directors and its Management; while the Board of Directors oversees the establishment of the company’s business policies, the Management in charge of executing said policies.

Corporations are divided into three categories: (i) **ordinary corporations** (*sociedad anónima*); (ii) **closed stock corporations** (*sociedad anónima cerrada*); and, (iii) **open stock corporations** (*sociedad anónima abierta*). The following chart includes the most relevant characteristics of the different types of corporations:

<table>
<thead>
<tr>
<th></th>
<th>ORDINARY CORPORATIONS</th>
<th>ORDINARY CORPORATIONS</th>
<th>OPEN STOCK CORPORATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of shareholders</strong></td>
<td>From 2 to 750.</td>
<td>From 2 to 20.</td>
<td>More than 750.</td>
</tr>
<tr>
<td><strong>Restrictions to share transfers</strong></td>
<td>Limitations (that are not absolute) to the transfer of shares can be agreed in the bylaws or in shareholder agreements.</td>
<td>Right of preferential acquisition (unless the bylaws establish otherwise) and/or others agreed by the shareholders.</td>
<td>No. Any disposition that limits the free transferability of the shares is deemed not valid.</td>
</tr>
<tr>
<td><strong>Administration</strong></td>
<td>Shareholders meeting, Board of Directors, Management.</td>
<td>Shareholders meeting, Board of Directors (optional), Management.</td>
<td>Shareholders meeting, Board of Directors, Management.</td>
</tr>
<tr>
<td><strong>Annual External Audit</strong></td>
<td>If stated in the bylaws, agreed by a shareholders’ meeting with the vote in favor of 10% of the shareholders or if it required under the applicable industry regulations.</td>
<td>If stated in the bylaws, agreed by a shareholders’ meeting with the vote in favor of 50% of the shareholders.</td>
<td>Mandatory.</td>
</tr>
<tr>
<td><strong>Public Registry</strong></td>
<td>Optional or in case the company issues debt.</td>
<td>Non-permitted.</td>
<td>Mandatory.</td>
</tr>
</tbody>
</table>
PARTNERSHIPS
A partnership (sociedad comercial de responsabilidad limitada) is a corporation in which the identity of the partners becomes relevant. Capital is divided into participations and there can only be up to 20 partners, who are not personally responsible for the liabilities of the company.

The Partners’ General Meeting is the supreme corporate body in a partnership, and it is under the administration of one or more managers, whether partners or not.

The distributable profits in a partnership are distributed among the partners, in proportion to their participation in the capital.

INCORPORATION OF CORPORATIONS
The process of incorporation of a corporation lasts approximately 10 business days and consists mainly of: (i) the drafting of the incorporation private instrument, which includes the articles of incorporation and the by-laws; (ii) the granting of the Public Deed of incorporation before a Notary Public; and, (iii) the registration of the company in the Public Registries.

There is no minimum share capital required for the incorporation of a company. The capital must be deposited in an entity of the financial system, which issues a certificate that will be inserted in the Public Deed of incorporation.

POWERS OF ATTORNEY
If the shareholders participating in the incorporation of a corporation are foreign legal entities, it will be necessary for them to grant powers of attorney in favor of a representative in Peru so that the latter can sign the respective incorporation documents.

For these purposes, foreign shareholders must deliver the following documents to Peru, duly apostilled or with the corresponding chain of legalizations:
i. Powers of attorney granted in accordance with the formalities of the law of the country of incorporation,
ii. Certificate of good standing duly issued by the competent authority of the country of incorporation, and
iii. Sworn statement from an officer of the company certifying that the powers-of-attorney have been duly granted in accordance to the laws of the country of origin and the bylaws of the company.

If the documents are in a language other than Spanish, they must be translated by a certified translator in Peru, after which they will be filed before the Public Registries for their registration.

**BRANCHES**

As an alternative to corporations, foreign investors have the option of establishing a branch in Peru. Branches are not legal entities independent from their parent companies but have a permanent legal representation and autonomy with respect to the activities assigned to them by the parent company.

The parent company is responsible for all liabilities assumed by the branch in Peru, without agreement to the contrary.

As an alternative to corporations, foreign investors have the option of establishing a branch in Peru.

The process for establishing a branch in Peru takes approximately 15 business days and consists of the following:

i. The competent body of the parent company adopts the resolutions to establish a branch in Peru, which must also designate one or more permanent legal representatives and determine the capital assigned to the branch,
ii. The resolutions for the establishment of the branch, together with a certificate of good standing duly issued by the competent authority of the country of incorporation and copies of the articles of incorporation or bylaws, must be apostilled or duly legalized and sent to Peru,
iii. If the documents being delivered are in a language other than Spanish, they must be translated by a certified translator in Peru,
iv. Granting of the minutes for the establishment of the branch and of the corresponding Public Deed before a Notary Public, and

v. Filing the documents before the Public Registries for the registration of the branch.

**JOINT VENTURES**

Joint ventures are commonly used in Peru by investors interested in associating with other investors to develop a mutual economic purpose for a determined period of time, without losing autonomy and independence.

Although joint ventures do not have specific regulations in Peru, being flexible structures that can easily be adapted to the needs of the parties by virtue of the contractual freedom prevailing in our legislation, the General Corporations Law has regulated two types of specific associative contracts: (i) the Consortium, and (ii) the Association in Participation.

It is important to highlight that associative contracts in Peru do not entail the incorporation of a different legal entity different from its members, as they are considered agreements and not independent legal entities.
3 PERUVIAN TAX SYSTEM
1. MAIN TAXES IN PERU

INCOME TAX

The tax legislation in Peru establishes a general Income Tax (IT) applicable to entities and individual’s resident and non-resident in Peru.

Taxpayers which are deemed as resident in the country are subject to the IT over their worldwide income (Peruvian or foreign sources). In contrast, with respect to taxpayer’s non-resident in the country, their branches, agencies or permanent establishments, the IT is levied on their Peruvian source income only.

Furthermore, the tax legislation in Peru also includes some specific Income Tax regimes which are applicable to small and medium enterprises provided some requirements are satisfied.

- **Domicile rules**

  **Entities:** Companies and other legal entities incorporated in Peru, as well as branches, agencies and permanent establishments established in Peru are considered tax residents in Peru.

  **Individuals:** Individuals of Peruvian nationality domiciled in the country and foreign nationals are considered tax residents in the country when they have physical presence in the country for a period longer than 183 calendar days, during any 12-month period.

- **Taxable income**

  **Entities:** The IT is imposed on any income obtained by Peruvian resident entities. The IT is applied over the accounting profit of the year adjusted by tax exempted income and non-deductible costs and expenses. Such profit is recognized in accordance to the accrual method.
**Individuals:** The IT is imposed with different rates depending on the type of income obtained by the individual such as income from capital, wages, or other services income, among other. As a rule, such income is recognized based on the cash method.

Notwithstanding the above, it is possible that individuals could obtain business income. In that case, the rules explained for Entities will apply.

**• IT Rates**

<table>
<thead>
<tr>
<th></th>
<th>Resident</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Entities</td>
<td>Individuals</td>
<td>Peruvian source income</td>
<td>29.5%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• 5% on capital gains, interest, royalties, among other capital income</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Between 8% to 30% for wages or other services’ income</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Foreign source income</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Between 8% to 30% for foreign source income (*)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Non-resident</th>
<th></th>
<th>Peruvian source income</th>
<th>Entidades</th>
<th>Individuales</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Gains</td>
<td>Exempt (**) or 5% (using the LSE) or 30% (without using the LSE)</td>
<td>Exempt (**) or 5% (using the LSE) or 30% (without using the LSE)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dividends and other forms of profit distribution</td>
<td>5%</td>
<td>5%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest</td>
<td>30% o 4.99% if certain requirements are met.</td>
<td>30% o 4.99% if certain requirements are met.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technical assistance</td>
<td>15%</td>
<td>24%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Digital services</td>
<td>30%</td>
<td>24%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Royalties</td>
<td>30%</td>
<td>30%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other income</td>
<td>30%</td>
<td>30%</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

(*) The rate of 6.25% will be applied over capital gains resulting from the disposal of securities sold by resident individuals in the so-called “Mercado Integrado Latinoamericano” (which includes the Stock Exchanges of Chile, Colombia, Mexico and Peru).

(**) The exemption over capital gains resulting from the disposal of common shares, ADRs or ETFs and bonds will apply provided some requirements are satisfied. In the case of common shares, ADRs or ETFs and bonds convertible
into shares, the requirements for the exemption are:

1. The disposal should be executed through the Lima Stock Exchange – LSE.
2. Within a period of 12 months the taxpayer or its affiliates should not transfer ownership of 10% or more of the total securities issued by the company.
3. The securities should have a stock market presence.

- **Income Tax Credits**

  Resident entities which obtain income from foreign sources, could apply as credit the IT paid abroad.

  In case of dividends or profits distributed by non-domiciled companies, they may be entitled to deduct both the IT withheld over the dividends as well as the IT paid the non-resident subsidiary at a first and second level, provided some requirement are met.

  Notwithstanding the foregoing, for income attributable under the International Tax Transparency Regime, taxes paid abroad by non-domiciled controlled entities are recognized as indirect credit.

- **Loss carryforward**

  Resident entities may offset total annual net losses, according to the following systems:

  a. **System A**: Carrying forward losses to the four consecutive years beginning with the following year in which the loss is generated.

     Due to the COVID-19 pandemic, exceptionally the losses of FY 2020 may be carried forward for five consecutive years.

  b. **System B**: Carrying forward losses to the following years without any time limitation beginning with the following year in which the loss is generated, but only to the 50% of the net income of such years.

- **Anti-avoidance clauses**

  Based on the General Anti Avoidance Rule (GAAR) included in the Pe-
Peruvian Tax Code, the Tax Administration is entitled to question shame or fraud transactions performed by taxpayers to reduce or avoid the payment of taxes.

Likewise, Peruvian tax legislation contains several specific anti avoidance rules which are applicable over different transactions such as reorganization procedures, finance transactions, among others.

- **Transfer Pricing rules**

  The transactions between related parties and the transactions carried out from, to or through non-cooperative countries or territories or with low or null taxation (tax haven) are subject to Transfer Pricing Rules, according to which the undervaluation or overvaluation with respect to the market value of their transactions must be adjusted for the intervening parties.

Likewise, formal obligations are regulated according to the volume of income and operations of the companies for the presentation of the Local Report, Master Report and Country-by-Country Report according to the guidelines proposed by the OECD.

- **Special or preferential incentives**

  Special or preferential incentives are in force for the following industries or territories:

  - Mining and Hydrocarbons: Return of VAT to the owners of the mining and hydrocarbon activity during the exploration phase, Tax stability agreements, Accounting in foreign currency, among others.

  - Energy: Accelerated depreciation for income tax purposes of up to 20% for hydroelectric assets (renewable energy projects), Tax stability agreements, among others.

  - Agriculture and Agribusiness: Reduced IT rate of 15% for agricultural businesses.

  - Investment in the Amazon: Income Tax Rate reduced from 0%, 5% or 10% (depending of the activity) for taxpayers with domicile in the Amazon and carrying out certain activities in such territory. The acquisition of goods and services made within the Amazon are not subject to VAT.
• Investment in Special Development Zones (ZED): Exemption from IR and IGV for taxpayers with domicile in the ZED and who carry out certain activities in said territory.

VALUE ADDED TAX (VAT)

The Value Added Tax (VAT) is the indirect value added tax that levies at the rate of 18% the following operations carried out in Peruvian territory: (i) sale of personal property in the country; (ii) rendering or use of services in the country; (iii) construction contracts; (iv) first sale of real estate by the builder; and, (v) importation of goods.

To maintain tax neutrality, the VAT paid on the purchase of goods or services constitutes a tax credit that can be deducted from the tax companies should pay on their sales (tax debit). This tax is determined, declared, and paid monthly.

It should be noted that exports of goods and services, which comply with the requirements set out in the Law, are exempted from the tax.

• VAT Early Recovery Regime

It consists of a special regime which allows the refund of the VAT paid on imports and/or local acquisitions of capital goods, new intermediate goods, services and construction contracts, when the following conditions are met:

• That they have been employed in the execution of the project foreseen in the investment contract signed with the Peruvian State. This project must consider an investment of no less than USD 5,000,000 (except for projects in the agricultural sector) and require a pre-operational stage of 2 years or more.

• That the beneficiary of the regime has acquired the goods, services and/or construction contracts during the pre-operational stage and directly.

Natural or legal persons who make investments in any third category income generating economic activity and who are in the pre-operational stage of the project can access this regime.
2. OTHER TAXES

EXCISE TAX (ISC)
This is a specific indirect tax on the sale of certain goods such as carbonated and alcoholic beverages, cigarettes and fuel.

The tax base is calculated according to the: value system, specific system and value system according to retail prices. Differentiated rates are applied according to the nature of the goods.

TEMPORARY NET ASSETS TAX (ITAN)
The ITAN is an estate tax that taxes net assets that exceed S/ 1'000,000 of subjects that generate third category income. The amounts paid can be used as a credit against other taxes generated by the taxpayer.

The taxable base is constituted by the value of the assets deducting deprecia-
ciations and amortizations allowed by the IT Law. The applicable rate is 0.4% on the excess value of S/ 1'000,000.

3. DOUBLE TAXATION CONVENTIONS (DTCS)
Peru has ratified the validity of DTC ´s that include provisions to regulate situations of double or multiple taxation between countries and establish mechanisms for collaboration between administrations in order to detect cases of tax evasion.

Peru currently maintains DTCS according to the OECD Model, which involves dividing the applicable tax between the source country and the country of residence, as well as setting maximum rates for certain types of income. Such is the case of the DTCSs signed with Brazil, Chile, Canada, South Korea, Mexico, Portugal and Switzerland.

Peru has also signed a Multilateral Tax Treaty within the Andean Community (Colombia, Ecuador y Bolivia) which states exclusive taxation at the country of source (Decision N.º 578).
4. INFORMATION EXCHANGE AGREEMENTS

Based on the ratification of the Convention on Mutual Administrative Assistance in Tax Matters, the return of final beneficiary, common reporting standard and information statement on trusts are regulated. These declarations allow the exchange of tax information with the tax administrations of the participating countries.

The obligation to file such returns was regulated as follows:

- Final beneficiary declaration: Main taxpayers (PRICOS) as of November 30, 2019. Subsequently, applicable to other taxpayers.
INTERNATIONAL TRADE

In Peru, international trade is an industry that contributes significantly to the country’s economic growth. Therefore, the Peruvian government promotes and encourages international trade operations, as well as commercial exchange with different countries through the signing of international trade agreements, the application of world-accepted trade rules and a tariff classification structure that provides low tariff rate, oriented to improve the necessary conditions to facilitate trade operations.

GENERAL CONSIDERATIONS

Peru is part of the World Trade Organization (WTO), the World Customs Organization (WCO) and participates in various multinational forums, therefore, we apply commonly accepted trade rules, allowing a greater comprehension about ties between private and public entities.

In this sense, goods entering and leaving the country are valued within the framework of the “Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) 1994” (Customs Valuation Agreement) created by the WTO and are codified following the regulations of the “Harmonized Commodity Description and Coding System” created by the WCO.

On the other hand, it should be noted that Peru has signed the following international trade agreements:

- World Trade Organization, APEC, European Union, Andean Community of Nations (Bolivia, Colombia, Ecuador), Mercosur (Argentina, Brazil, Paraguay, Uruguay and Venezuela), European Free Trade Association (Switzerland, Iceland, Norway and Liechtenstein), Pacific Alliance (Colombia, Chile, Mexico), United States of America, Mexico, China, Canada, Japan, Singapore, South Korea, Thailand, Chile, Costa Rica, Canada, Cuba, Australia and Honduras.
Likewise, trade agreements with Guatemala, Brazil and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) are pending to enter into force, meanwhile, agreements with El Salvador, Turkey and India are being negotiated.

**NATIONAL REGULATION**

The Peruvian General Customs Law establish the legal framework that regulates the goods received and issued into the country. Among the general stipulations, we can point out the following:

- The Peruvian General Customs Law establish the legal framework that regulates the goods received and issued into the country. Among the general stipulations, we can point out the following.

- Is mandatory to be register in the Single Taxpayer’s Register (RUC), whether they are domiciled entities in Peru or natural persons.

- In case there are specific rules established on the signed international trade agreements related to certain customs treatment, such specific rules must overrule local regulations.

- The benefits established on the signed international trade agreements require that the rules set forth therein must be fulfilled to access preferential customs treatment.

- Fast delivery shipments carried by fast delivery companies (Courier) and the carrying trade of shipments or postal packages transported by the postal service are allowed.

- The existence of Free Trade Zones encourages the creation or establishment of companies in said areas based on a special customs and tax legal treatment in order to promote their economic development. In such areas it is allowed to carry out several activities such as manufacturing, agroindustry, maquila, storage, packaging and distribution, among others, for their subsequent entry or exit from the national territory.

- The determination of the tax base of the goods is set based on their CIF value
(FOB plus insurance and freight and, in certain cases, some adjustments established according to the WTO Customs Valuation Agreement).

The existence of Free Trade Zones encourages the creation or establishment of companies in said areas based on a special customs and tax legal treatment in order to promote their economic development.

1. Regarding the goods receipt into Peru

- Customs regimes have been established to allow permanent or temporal entrance of goods into the country, establishing different conditions for the payment of import taxes at the time of their entry or suspending them for later, if applicable.

- When the goods are intended for consumption in the country, three levels of tariff rate are legally established: 0%, 6% and 11%, in addition to the Value-Added Tax - VAT (18%). It should be noted that more than 70% of goods are subject to the 0% tariff rate. Additionally, depending on the nature of the goods, other additional taxes may apply, such as the Value-Added Tax Perceptions (with rates of 10% -among other cases, when is first imported goods-, 5% -used goods- or 3.5% - in the other cases-), the Selective Excise Tax, anti-dumping duties, countervailing duties, variable duties.

- On the other hand, when the goods enter the country temporarily, either for their use or transformation and their return abroad subsequently, payment of taxes are not required for the period of time that the rule authorizes their stay in Peru; although, it does require the presentation of a guarantee for the amount of applicable taxes plus interest.

- Likewise, there is the possibility of entering the merchandise into Peru through the customs warehousing regime that allows the suspension of the payment of taxes for 12 months. At the end of that period, the goods must be imported or reshipped abroad.
Recently, the current customs legislation has established that the goods intended to be import into Peru must be declare to the advance dispatch modality. This mandatory measure implies the presentation of a financial guarantee and to fill in the customs declaration of goods before it arrives into the country in order to obtain the release of the imported goods within 48 hours from the end of their unloading.

When the goods are intended for consumption in the country, three levels of tariff rate are legally established: 0%, 6% and 11%, in addition to the Value-Added Tax - VAT (18%). It should be noted that more than 70% of goods are subject to the 0% tariff rate.

2. Regarding the goods issue

- Export is free of taxation.

- The definitive export regime allows access to other structures provided by the customs regulations such as drawback and replacement of merchandise in franchise; as well as the refund of the balance left in favor of an exporter.

- Mainly, the drawback consists of the refund of 3% of the FOB export value of the goods (with a limit of 50% of the production value of the goods), for those who produce and export final goods in which they have used or consumed inputs that paid import taxes.

- The customs legislation also allows the regime that establishes temporary export of merchandise for transformation abroad and further return to the country, without legally considering it as a definitive import.

3. International trade actors

International trade operators participating in these customs operations must comply with a regulatory framework to be granted of an authorization to ope-
rate, issued by the Customs Administration. The above-mentioned customs authorization implies compliance with several requirements and obligations, as well as the possibility of being sanctioned if they are not fulfilled. Importers and exporters are classified as **intervening operators** and, therefore, do not require authorizations, but they can be sanctioned by the Customs Administration.

According to the globalization of international trade operations, the Customs Administration has approved a procedure to grant a certification of international trade operators and intervening operators as Authorized Economic Operators (OAS) to facilitate their customs operations and to benefit them with several profits. The OAS certification is recognized in many countries under the mutual recognition agreements that have been signed, which indicates for entities to enjoy an advantage in their international trade operations.
PERUVIAN LABOR SYSTEM
GENERAL LABOR REGIME

Labor contracts in Peru can be executed under the following modalities:

1. DIRECT HIRING

   - **Indefinite term employment**: The duration of these contracts is indefinite; therefore, they do not have a term of conclusion. Consequently, the termination of these contracts requires a specific cause of termination provided by law. This contract does not need to be formalized in writing.

   - **Fixed-term employment**: Temporary employment is permitted if there is a temporary reason to justify such employment. Peruvian law establishes the reasons for which temporary contracts may be justified (market needs, commencement or increase of activities, commencement of a work or service, among others). A written employment contract is required.

   - **Part-time employment**: Part-time employment apply for jobs with a daily work shifts that does not reach 4 hours on average. These contracts must be formalized in writing and communicated to the Ministry of Labor. The wages in Part Time contracts can be lower than the Legal Minimum Wage.

2. INDIRECT HIRING

   - **Secondment Agreements**: Under this scheme, a Secondment Entity assigns its personnel to the user company for the provision of temporary, complementary, or specialized services. The Secondment Entity requires an authorization from the Ministry of Labor.

   - **Outsourcing services**: Under this scheme, the contracting company entrusts a specialized company (outsourcing company) with an integral part of its production activities. The outsourcing company must have its own
financial, technical, and material resources, as well as be responsible for the results of its activities and have its personnel under its management.

Temporary employment is permitted if there is a temporary reason to justify such employment. Peruvian law establishes the reasons for which temporary contracts may be justified (market needs, commencement or increase of activities, commencement of a work or service, among others).

3. EMPLOYMENT FOR FOREIGN CITIZENS

Companies can hire foreign personnel if they do not exceed 20% of the total number of their local personnel and that their remuneration does not exceed 30% of the total payroll. This limitative percentages will be subject to exemption in case of the following cases, among others:

a. Specialized professionals or technical personnel.
b. Management personnel of a new business activity.
c. Teachers.

Employment contracts must be concluded in writing, for a maximum period of 3 years, which can be extended. The contract requires the approval of the Ministry of Labor.

The approval of the contracts by the Ministry of Labor will not be necessary, nor will the limiting percentages be applicable, in cases where international agreements between Countries exist for such purpose (Spain, Argentina, Chile, Colombia, Paraguay, Uruguay, Brazil, Ecuador and Bolivia). The employment contract can only be initiated once the foreign employee holds the applicable work visa.
4. WORKING HOURS

- **Ordinary Working Time:** 8 hours per day or 48 hours per week maximum. Atypical and cumulative working shifts can be established (i.e. Mining Activities).

- **Overtime:** Time worked in overtime entails the payment of overtime with a surcharge equivalent to 25% of the hourly value for the first 2 hours and 35% for the following overtime hours.

- **Night shifts:** Employees with shifts between 10:00 p.m. and 6:00 a.m. cannot be paid less than the Minimum Wage with a surcharge of 35%.

5. BENEFITS

<table>
<thead>
<tr>
<th>Name</th>
<th>Benefit</th>
<th>Characteristic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Wage</td>
<td>S/ 930 (USD 270)</td>
<td>• Applicable to employees with daily shifts of 4 hours (in average) or more.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The Government can readjust the amount.</td>
</tr>
<tr>
<td>Family Allowance</td>
<td>S/ 93 (USD 27)</td>
<td>• Equivalent to 10% of the Minimum Wage.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Applicable for employees who have one or more children under the age of 18 and is extendable to the age of 24 if coursing college education.</td>
</tr>
<tr>
<td>Legal Bonuses</td>
<td>Equivalent to a monthly salary for each payment</td>
<td>• Payable on a semi-annual basis, every July and December.</td>
</tr>
<tr>
<td>Extraordinary Bonus</td>
<td>9% or 6.75% of the Legal Bonus</td>
<td>• Payable on a semi-annual basis, every July and December.</td>
</tr>
<tr>
<td>Compensation for Length of Services (CTS)</td>
<td>Equivalent to a monthly Salary (approximately)</td>
<td>• Payable on a semi-annual basis, every May and November, in a bank account chosen by the employee.</td>
</tr>
<tr>
<td>Vacations</td>
<td>30 days of paid leave</td>
<td>• Applicable to employees with daily shifts of 4 hours (in average) or more, generated for each year of services.</td>
</tr>
</tbody>
</table>
### Legal Profit Sharing

Between 5% and 10% of the profits generated by the employee

- The company must have more than 20 workers on average during the applicable Fiscal Year.
- The percentage to be distributed will depend on the economic activity of the company.

### Life Insurance

- Employee will be covered with a life insurance policy hired by the employee.

### 6. SOCIAL SECURITY

<table>
<thead>
<tr>
<th>Name</th>
<th>Party in charge</th>
<th>Calculation Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Healthcare Contribution</td>
<td>Employer</td>
<td>The contribution is equivalent to 9% of the remuneration received by the employee. The employer can hire a Private Insurance Company (EPS) to provide employees with broader health coverage. In this case, the contribution is distributed as follows: 6.75% for ESSALUD and 2.25% as EPS credit.</td>
</tr>
<tr>
<td>(ESSALUD)</td>
<td></td>
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</tr>
<tr>
<td>Private Pension Funds</td>
<td>Employee</td>
<td>These contributions will only be applied to the monthly cash compensation received by the employee, with an average rate of 13.3% (depending on the AFP chosen by the employee).</td>
</tr>
<tr>
<td>(AFP)</td>
<td></td>
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</tr>
<tr>
<td>National Pensión Fund</td>
<td>Employee</td>
<td>These contributions will be applied to the worker’s monthly remuneration, either in cash or in kind, at a rate of 13%.</td>
</tr>
<tr>
<td>(ONP)</td>
<td></td>
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</tr>
</tbody>
</table>
6 JUDICIAL LITIGATION AND ARBITRATION IN PERU
Civil litigation refers to several judicial procedures to resolve private-private and private-public disputes between two or more parties concerning all legal matters except for criminal and labor ones.

In Peru civil litigation derives from constitutional right granting access to justice where two entities or individuals can bring their dispute to judges to be solved. In this context, judicial litigation is the national resolution system by default established in the 1993 Political Constitution.

Every time investors or multinational corporations decide to run operations in national soil it must be considered all potential legal issues, conflicts, and problems that can affect the company, its operations, and employees as well. These disputes usually involve civil, constitutional, administrative, or regulated activities, commercial and taxation issues.

Both plaintiffs and defendants may seek judicial protection throughout of two judicial instances and one of extraordinary national competition.

For filing any claim before Peruvian judicial authorities, corporations should have access to legal counsel involving a solicitor lawyer with a BAR registration as representatives in courts in order to meet the application capacity requirement of the procedural parts.

Furthermore, plaintiffs or defendants should seek judicial relief along three hierarchical degrees. District judicial circuit (first instance or degree and appellation
courts) and national competence filing an extraordinary writ known as recurso de casación to be granted by the Supreme Court of Justice (writ of certiorari).

Peruvian Civil Procedure Code of 1993 regulates all rules concerning civil procedures and stands as a reference to other judicial procedure codes and rules.

Since January 2020, all matters involving civil litigation are conducted by electronic judicial files, pursuing the efficiency standards brought by orality and digital litigation techniques.
ARBITRATION

Constitution of 1993 allows disputes among domestic and international investors and corporations involving government or state-controlled and regulated operations as well, to be submitted to national and international arbitration.

The Peruvian Constitution offers alternative dispute resolution systems based on the principle of party autonomy. Arbitration emerges then as a subsidiary relief for parties whenever they agree in the contracts to manage its controversies by those means.

In the past 10 years, Peru has been experiencing an increasing trend to brought disputes before arbitration courts. Contractors are encouraged to settle or agree with arbitration clauses within their contracts, excepting all the matters that by law must be solved by default judicial adjudication. Arbitration as an alternative adjudication model must be initiate and developed only if the parties settled and agreed to do so. No arbitration procedure can exist without a specific arbitration agreement clause.

Contrarywise to foreign regulation, arbitration is mandatory in Peru as a default adjudication system whenever public contract issues between govern sections and private entrepreneurs or companies are involved. Public arbitration courts have been created to settle disputes regarding public contracts, also known as administrative arbitration.

Impugnation against any arbitration award can arise only if this does not contain a due or minimal justification or response to all allegations and claims brought by parties or whenever arbitration was developed in the absence of an arbitration agreement. Judicial claim known as anulación de Laudo arbitral (void award claim) shall be filed against arbitration court before Judicial Appellation ones (2nd Degree of judicial adjudication).
According to arbitration legislation (Law Decree N.º 1071), judicial relief can only be pursued in two scenarios: before an arbitration award considered invalid or null, and in the event of non-compliance of the award by the defendant, through the enforcement action of arbitration award.

In the case of international investment disputes involving Peruvian Government and transnational companies or corporations, arbitration can be held before international chambers of commerce or centers.

Finally, if any non-Peruvian resident should seek judicial relief in Peruvian soil upon the basis of an arbitration award given by any foreign arbitral court, the exequatur shall be the judicial procedure to recognize and enforce foreign arbitral awards. Following the 1958 New York Convention, ratified by Peru on 7th July 1988 foreign awards can be as effective as any given in its original country before judicial recognition granted by any Peruvian judge.

Judicial relief can only be pursued in two scenarios: against void awards and to enforce awards in absence or failure of specific performance expected by the defendant.
Peru is a mining country by excellence since pre-Inca times. Geologically privileged because of the presence of the Andean Cordillera along its territory. It’s yet considered to be underexplored.

Currently mining products represent more than 60% of the total exports of the country and mining reported more than 9% of the gross domestic product on 2019.

This explains why Peru is one of the main mining producers worldwide. In 2019 Peru was: The first gold producer of Latin America and the sixth in the world; the second copper producer of Latin America and the second in the world; the second silver producer of Latin America and the second in the world; the first zinc producer of Latin America and the second in the world; the first lead producer of Latin America and the third in the world; the first tin producer of Latin America and the fourth of the world; the second molybdenum producer of Latin America and the fourth in the world; the second cadmium producer of Latin America and the eighth of the world; and, the first selenium producer of Latin America and the tenth of the world.

Peru has a very simple and friendly legal system for granting of the mining rights, providing security in title for national and foreign investors alike.

Also, counts with a regulatory frame that provides incentives and stability for investors for carrying out mining activities; and, through its governmental entities, offers to the investors a wide geological and cadaster information at a national level. These have permitted Peru to attract the interest of all the big worldwide mining companies.
According to official information, by the end of 2019, there were 639 operative mines, 311 exploration projects and 80 mineral beneficiation plants.

The mining sector is mainly regulated by the Organic Law for the Sustainable Use of Natural Resources, the Mining General Law, the National Mining Cadaster Law and its various regulations.

According to them, the following are mining activities: (i) wildcatting, (ii) prospection, (iii) exploration, (iv) exploitation, (v) general labor, (vi) ore dressing, (vii) commercialization, (viii) mining transportation and (ix) storage of minerals concentrate.

These activities can be carried out by national or foreign natural or legal entities; and are developed by means of the concession system, except for the activities of wildcatting, prospection, commercialization, and storage of minerals concentrate.

The mining concession grants the titleholder the right to explore and exploit the natural resources with the limitations established in its title, provided that the titleholder achieves the required permits and licenses for the activities.

The mining concession grants the titleholder the exclusive right of use and taking advantage of the natural resources. The mining concessions are granted for an indefinite period and are irrevocable provided that the titleholder complies with the legal obligations. The minerals extracted in compliance with the law are property of the titleholder of the mining concession.

The mining concession grants the titleholder the exclusive right of use and taking advantage of the natural resources.

The mining concession are extinguished by: (i) total or partial resignation to the granted area of the mining concession, (ii) abandonment, when the rules of the titling procedure regulation is breached; (iii) expiration, when the obligations to keep the mining concession in force are not complied (see below); (iv) cancellation, when the mining claims or concessions overlap to priority mining claims or concessions, or when the mining claims or concessions are not located; and, (v) nullity, when the mining claim is staked by an incapable person.
The mining sector is divided in layers, according to the number of hectares hold by each titleholder and the capacity of their mineral treatment plant. So, an Artisanal Mining Producer is anyone who owns, by any title, up to 1,000 hectares or has an installed production and/or treatment capacity of no more than 25 metric tons per day. A Small Mining Producer is anyone who owns, by any title, up to 2,000 hectares or has an installed production and/or treatment capacity of no more than 350 tons per day. And miners under the general regime are all the other miners that do not qualify as Artisanal Mining Producers or Small Mining Producers. Each of these layers is subject to different obligations and different authorities.

The mining concessions can be subject to all the agreements admitted by the common legislation. The following agreements are particular to the mining business, as regulated by the mining law:

a. **Transfer Agreement**, through which mining concessions are transferred.

b. **Option Agreement**, through which, the titleholder of a mining concession agrees, unconditionally and irrevocably, to execute in the future a definitive agreement, provided that its counterpart exercises its right, within the agreed term.

c. **Mining Assignment Agreement**, through which the titleholder assigns temporally its mining concession, benefit concession, general labor concession or mining transport concession to a third party, in exchange of a compensation.

d. **Mining Mortgage Agreement**, allows to create a lien on the mining concessions registered in the Mining Rights Public Registry.
CONCESSIONS

• **Mining Concession**
  The Mining Concessions are classified in metallic and non-metallic, can have an extension of 100 to 1,000 hectares (with some specific exceptions) and are a different and separated property from the land where they are located.

• **Benefitiation Concession**
  The Benefitiation Concession grants its titleholder the right to extract or concentrate the valuable part of the extracted minerals and/or melt, purify, or refine extracted metals through physical, chemical or physicochemical procedures.

• **General Labor Concession**
  The General Labor Concession grants its titleholder the right to provide services such as ventilation, drain, hoisting or extraction for two or more mining concessions of different titleholders.

• **Mining Transport Concession**
  The mining transport concession grants its titleholder the right to install and operate a massive, continuous and non-conventional transport system (such as transport belts, pipelines or cableways) of mineral products from one or various mining operations to a port, a treatment plant or a refinery or in one or more sections of these routes.

OBLIGATIONS TO KEEP IN FORCE THE CONCESSIONS

a. **Mining Fee**: In the mining general regime, as of the year in which the mining claim is formulated, the titleholder must pay a Mining Fee of US$ 3.00 per year and per hectare requested or granted.

  From the year a beneficiation concession is requested, the payment of the Mining Fee is made based on its installed capacity.

  When a general labor or mining transport concession is requested, the petitioner must pay a Mining Fee of the 0.003% of the Tax Unit\(^1\) per lineal meter or projected labor.

\(^{1}\) The Tax Unit in the year 2020 is S/. 4,200.00.
b. **Work or Investments:** The mining concession obliges to its work, obligation that consists in the investment to produce mineral substances.

In the general regime, the production cannot be less than the equivalent of a Tax Unit per year and per granted hectare, for metallic substances. The production must be obtained no later than the expiration of the tenth year, computed from the following year in which the mining concession title was granted.

In case the production is not initiated as indicated in the previous paragraph, from the first semester of the eleventh year computed from the following year in which the mining concession title was granted, the titleholder must pay a penalty of 2% of the minimum annual production required per year and per hectare, until the minimum annual production and/or investment required is met. The penalty percentage is increased to 5%, from the expiration of the fifteen-year computed from the following year in which the mining concession title was granted, and to 10% from the expiration of the twenty-fifth year computed from the following year in which the mining concession title was granted. If the minimum production is not obtained by the expiration of the thirtieth year computed from the following year in which the mining concession title was granted, the mining concession expires.
Notwithstanding the foregoing, the titleholder will not pay the penalty if it invests no less than ten (10) times the amount of the penalty per year and per hectare for each mining concession.

Failure to pay the Mining Fee or the penalty for not having reached the minimum investment or annual production, for two (2) consecutive years, leads to the expiration of the mining concession.

PERMITS TO CARRY OUT MINING EXPLORATION AND EXPLOITATION ACTIVITIES, AMONG OTHERS

Under the mining general regimen, the following permits, licenses and/or authorizations are required to carry out mining exploration and exploitation activities:

Permits to carry out mining exploration

1. Surface Land Use Agreement for mining purposes.
4. Environmental Certification

The mining exploration activities are classified in the following categories:

a. Category I, which includes projects that can cause slight environmental impacts. This category requires the submission of an Environmental Impact Declaration – DIA.

   The Category I includes projects (i) up to forty (40) perforation platforms; (ii) with an effective disturbed area of up to ten (10) hectares, considering platforms, trenches, auxiliary facilities and access; and (iii) the construction of tunnels of up to one hundred (100) meters long, not located underlying the projection of fragile ecosystems, water bodies or springs in rainy seasons.

b. Category II, which includes projects that can cause moderate impacts. This category requires the submission of a semi detailed Environmental Impact Assessment - EIAsd.

2 Depending on the characteristics of the mining projects, not all permits may be applicable.
The Category II includes projects (i) with forty (40) to seven hundred (700) perforation platforms; (ii) with an effective disturbed area greater than ten (10) hectares, considering platforms, trenches, auxiliary facilities and access; (iii) the construction of tunnels of more than one hundred (100) meters long, not located underlying the projection of fragile ecosystems, water bodies or springs in rainy seasons; and (iv) with a pilot plant.


6. Authorization of execution of studies to obtain Superficial or Underground Water Use License.

7. Superficial or Underground Water Use License.


11. Mining Operation Certificate, for metallic and non-metallic operations.

12. Magazine Operating License.

13. Explosives handling License.


15. Controlled Assets Registry.

16. Hydrocarbons Registry as Direct Consumers with Fixed or Mobile Installations.

Permits to carry out the construction/extension of mining facilities and/or mining exploitation

1. Surface Land Use Agreement for mining purposes.


4. Environmental Impact Assessment – EIA.

   Environmental assessment for the activities of exploitation, mining treatment, general labor, mining transportation and storage of minerals concentrate and/or related activities.
The EIA should be detailed, if the project can cause significative negative environmental impacts; or semi detailed if it can cause moderate negative environmental impacts.


6. Authorization for the execution of studies to obtain Superficial or Underground Water Use License.

7. Superficial or Underground Water Use License.


11. Mining Operation Certificate, for metallic and non-metallic operations.

12. Magazine Operating License.

13. Explosives handling License.


15. Use of ANFO in underground mining.

16. Controlled Assets Registry.

17. Power Generation Authorization.

18. Hydrocarbons Registry as Direct Consumers with Fixed or Mobile Installations.

Likewise, mining concessions titleholders are obliged to close the areas, labors and facilities of theirs mining projects, through the Mines Closure Plan, which must be elaborated and submitted to the competent authority, within the first year of approval of the Environmental Impact Assessment, and implemented, as well as establishing the correspondent environmental guarantees, in order to mitigate the negative impacts to the health of the people, the ecosystem and the property.

MINING INVESTMENT PROMOTION MEASURES

Mining legislation authorizes the State to enter into stability agreements with the investors that commit certain investments in mining projects and operations, in which it ensures the following:
a. Tax stability, by which the investor will be subject only to the tax regime in force as to the date of approval of the investment program submitted, not being applicable any tax created later.

b. Currency stability, referred to the non-discrimination regarding the Exchange rate, so the best exchange for foreign trade operations should be granted, if there is any type of differential exchange control system.

c. Administrative stability, regarding the stability of special regimes when they are granted, by tax refund, temporary admission, and others.