

PERU

BUSINESS LEGAL GUIDE

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INDEX

1.	DOCUMENT'S PRESENTATION	4
2.	ROL OF THE STATE	4
3.	FOSTERING PRIVATE INVESTMENT	4
3.1	General Guarantees to Investment	4
3.2	Foreign Investment Guarantees	5
3.3	Privatization and Concessions	5
3.4	Legal Stability Agreements	7
3.5	Multilateral and Bilateral Investment Agreements	7
4.	BUSINESS FORMS FOR ECONOMIC ACTIVITIES	8
4.1.	Types of corporations	8
4.2.	Common Corporations	8
4.3.	Closely Held Corporations	9
4.4.	Public Corporations	9
4.5.	Limited Liability Companies	10
4.6.	Branch	10
4.7.	Partnership Agreements	10
5.	TAX REGIME	11
5.1	General Provisions	11
5.2	International Agreements	11
5.3	Tax Identity	11
5.4	Income Tax	12
5.5	Value Added Tax	13
5.6	Excise Tax	13
5.7	Financial Transactions Tax	14
5.8	Net Assets Tax	14
5.9	Municipal Taxes (Local Government Taxes)	14
6.	LABOR AND IMMIGRATION LAWS	15
6.1	Work Agreements	15
6.2	Remuneration	17
6.3	Termination of the labor relationship	19
6.4	Immigration	19
7.	INTELLECTUAL PROPERTY	20
8.	FREE AND FAIR COMPETITION	23
9.	INTERNATIONAL TRADE	23
9.1	Guarantees	23
9.2	Regime	24
9.3	Integration Treaties	24
10.	SECTORS	25
10.1	Agriculture and Agroindustry	25
10.2	Banking, Insurance and Finance	26
10.3	Electricity and Hydrocarbons	28
10.4	Mining	30
10.5	Fishing Industry	31
10.6	Telecommunications	32
10.7	Transport Infrastructure	33
10.8	Environment	33
10.9	Tourism	34
11.	MOST IMPORTANT COMPANIES IN PERU	36
12.	FREQUENTLY ASKED QUESTIONS	38

1. DOCUMENT'S PRESENTATION

Echecopar is prestigious a Law Firm with more than 50 years of legal practice in Peru. As an organization that provides legal global services, not only to national companies, but also to foreign companies, we know how important it is for people that are interested in investing in Peru to have a simple and complete summary of the different relevant issues of the Peruvian Legal Framework.

With this main purpose, Echecopar offers, since 2004, an updated Business Legal Guide.

2. ROL OF THE STATE

According to Peruvian Constitution, the existence of public corporations can only be approved by law, for the performance of subsidiary activities, and based in public or national convenience.

The Peruvian State promotes and supervises free and fair competition and must repress any restrictive practice that affects competition in particular those practices that are consequence of the abuse of dominant positions or monopolies. Monopolies cannot be created or allowed by law.

The General Law for Private Investment Growth, approved by Legislative Decree 757 on November 1991 eliminated and banned all forms in which the State was able to reserve certain economic activities for it. These reservations are only applicable for public interest or national security reasons and must be approved by law passed by the Congress. This Legislative Decree establishes equal conditions for both the public and private activity.

3. FOSTERING PRIVATE INVESTMENT

- **General guarantees to investment**
- **General guarantees to foreign investment**
- **Privatizations and concessions**
- **Legal Stability Agreements**
- **Multilateral and Bilateral Investment Agreements**

3.1 General Guarantees to Investment

Peruvian constitutional framework opens the economy to private investment, which is practiced in a social market economy. It also fosters competition and guarantees foreign investment in any kind of activity and corporation. It expressly provides for the right of free possession and alienation of foreign currency.

The General Law for the Private Investment Growth, Legislative Decree 757, establishes the rights and guaranties that are applicable to all individuals and legal entities, either local or foreigner that are holders of investments in Peru. It contains regulations on legal

stability agreements about economic issues, investment security regulations on tax and administrative matters and environmental regulations.

It provides that the law of supply and demand rules prices. The only prices that are regulated by the administration are the public service tariffs provided by law.

It is guaranteed that no discriminatory or different treatments shall be made concerning currency exchange, prices, tariffs, or customs duties among investors, based on sectors or kinds of activity or geographical location, nor among individuals and legal entities, local or foreigner.

It also recognizes freedom of trade and industry, as well as of export and import.

3.2 Foreign Investment Guarantees

According to article 63 of the Peruvian Constitution of 1993, foreign investors have the same rights as local investors.

This constitutional guarantee is also included in the General Law for the Private Investment Growth, Legislative Decree 757.

It is established that there shall be no discrimination against foreign investment, and that its authorization shall be automatic, being only subject to registration after it is taken forth.

Investors are guaranteed with the right to freely transfer abroad through freely converted foreign currency and without any authorization the total amount of their capital stock, dividends, profits and royalties, as well as any consideration paid for the use and transfer of technologies and intellectual property elements. In cases where the exchange of local currency to foreign currency is required, investors shall have the right to use the most favorable currency exchange. These rights may be stabilized through legal stability agreements fulfilling the requirements established by law.

The only restrictions authorized by the Constitution in connection with foreigners relate to the prohibitions to acquire or possess within 50 kilometers of the boundaries, mines, lands, forests, water, fuels and energy sources, unless there were an exception declared by Supreme Decree based on public convenience or national benefit. The General Law for the Private Investment Growth provides as a cause of public convenience the concessions in productive activities, thus being subject to approval only through a Supreme Resolution. Likewise, the General Law of hydrocarbons considers as public convenience and national benefit the exploration and exploitation of Hydrocarbons, being thus exempted from the prohibition referred to above.

3.3 Privatization and Concessions

Since 1991 by Legislative Decree 674 and other Legislative Decrees that are concentrated today in Supreme Decree 059-96-PCM, the Peruvian State has established a legal framework to foster private investments on the privatization of state owned

companies and on the granting of infrastructure and public service concessions. The State Agency in charge of this effort is PROINVERSION (www.proinversion.gob.pe).

The Legislative Decree 674 established the forms and procedures for the transfer of state owned entities to the private sector. In light of the constitutional definition that rules that the State may only carry on entrepreneurial activities on a subsidiary basis, the privatization process has resulted in the transfer of most of the state owned companies to the private sector. All telecommunication companies and banks in which the State had any form of participation have been transferred to the private sector. However, there are still some companies whose destiny must be determined by the State.

The legal regime for the promotion of private investment on concessions in infrastructure and public services is ruled by Supreme Decrees 059 and 060-96-PCM. They regulate all the different forms of private intervention in concessions by means of public bidding mechanisms.

Among the guarantees and benefits that the State grants to concessions that are fostered through PROINVERSION, it is possible to include in all contracts damages provisions for cases in which concessions are terminated due to causes that are not expressly provided in the contract. It is also possible to include national and international arbitration clauses, as well as provisions regarding systems for the revision of tariffs, prices or toll, or for the recovery of the agreed investment, in cases where such recovery is justified.

Adequate special tax benefits for this kind of contracts is also included. Annual depreciation is allowed for the assets that are subject to concession in accordance with their useful life, but limited to an annual 20% rate. As an alternative, the referred assets may be totally depreciated during the remaining period of the termination of the concession term, applying for this purpose the lineal method. Such regime is also applicable for assets acquired or constructed by the concessionaire and transferred to the State during the concession term.

There is also a General Sales Tax (VAT) Early Recovery Regime that includes the tax paid for services, construction contracts, intermediate assets and fixed assets, to be used directly in the performance of the contract.

The possibility to sign a legal stability agreement with the Government for the whole concession term is also established.

Among the most important concessions that have been granted under this regime are the concession for the construction and operation of Transmantaro's electric interconnection national line, the concession of the PCS Telecommunications Band and Jorge Chávez, Lima International Airport.

During 2005 the government have granted some important concessions. The most relevant ones are the Interoceanic Road, the IRSA North Road and Lima-Ica Road.

According to the Organic Law of Municipalities, approved in May of 2002, the Municipal Councils are allowed to grant to private companies, concessions for the construction of infrastructure and performance of local public services.

Law 28059, approved in August of 2003, establishes the legal framework for public decentralized investment for local, regional and national governments. The law states the principles already included in former regulations and also establishes functional jurisdiction for each governmental level.

This was done by Supreme Decree 015-2004 PCM. Its interesting to comment that this decree also rules the possibility for private investors to propose projects by private initiative. If no other private investor is interested in the project the investor that has proposed the project will become authorized for its execution. If there are other interest investors a bid process will be performed, but the investor that had presented the initiative will be reimbursed for the costs of the studies.

3.4 Legal Stability Agreements

PROINVERSION, on behalf of the Peruvian government, executes legal stability agreements with legal foreign investors. Stability Agreements include specific tax regulations and labor regulations.

The Legal Stability Agreements which are executed between PROINVERSION and investors before the investment is made have the force of a law and provide investors with stability on the following rights in force in the date the agreements are executed and for a term of 10 years:

- To freeze the income tax regime;
- To remit abroad the total amount of the capital and dividends;
- Not to be discriminated;
- To use the most favorable exchange rate;
- Stability on the regimes to hire personnel; and,
- Stability on certain regimes related to the export such as temporary admission of goods, free zones and others of similar characteristics.

Legal Stability Agreements are terminated if the investment is not made within the term set forth therein, which may not exceed two years; if no evidence of the investment is provided; and if PROINVERSION's consent is not obtained before assigning the agreement to a third party.

Since May 2002, the Organic Law of Municipalities, Law 27972, allows Municipalities to enter into tax stability agreements with investors.

3.5 Multilateral and Bilateral Investment Agreements

Foreign Investors are protected against inconvertibility, expropriation, political violence and other non-commercial risks through access to the corresponding multilateral and bilateral conventions such as the Overseas Private Investment Corporation (OPIC) and the Multilateral Investment Guaranty Agency (MIGA). Peru has also joined the International Convention for Settlement of International Disputes (ICSID) as an alternative to settle disputes arising between investors and the government.

The Peruvian Government has signed, and is part to 29 bilateral investment agreements currently in force. The countries with which Peru has signed said agreements are Germany, Argentina, Australia, Bolivia, Chile, China, Colombia, Korea, Cuba, Denmark, Ecuador, Spain, Finland, France, Great Britain and North Ireland, Netherlands, Italy, Malaysia, Norway, Paraguay, Portugal, Czech Republic, Romania, El Salvador, Singapur Sweden, Switzerland, Thailand, and Venezuela.

4. BUSINESS FORMS FOR ECONOMIC ACTIVITIES

- **Types of corporations**
- **Common Corporations**
- **Closely Held Corporations**
- **Public Corporations**
- **Limited Liability Companies**
- **Branch**
- **Partnership Agreements**
- **Join Venture**

4.1. Types of corporations

The General Law for the Private Investment Growth recognizes the freedom of the investors to adopt any form of company to carry on their economic activities. Only for activities related to the banking system may the law establish the obligation to adopt a certain form of company.

The legal system recognizes as a matter of law the existence and capacity of foreign entities to exercise in Peru all actions and rights that may correspond to them whether they exercise such actions and rights on a habitual basis or not. In order for such entities to exercise all acts included in their corporate purpose on a habitual basis they shall be taken forth under Peruvian law. This entails that they shall at least be recorded in the Public Registry indicating their domicile and a representative. Some sectors may demand from the foreign companies to set up a subsidiary or a branch in Peru.

The Peruvian Business Corporation Law governs the different companies based on which investors may carry on their business in Peru. The three company forms most commonly used by investors provided by such law are the corporation (sociedad anónima), the limited-liability company (sociedad comercial de responsabilidad limitada) and the branch (sucursal, which does not qualify as a legal entity). Regarding the corporation, the aforementioned law contemplates three special forms thereof: common corporation (sociedad anónima ordinaria), closely held corporation (sociedad anónima cerrada) and public corporation (sociedad anónima abierta).

4.2. Common Corporations

The common corporation is the most used form of running a business in Peru. It is a limited liability corporation, capitalist in essence, with a structure that allows the separation

of management from ownership. For its incorporation, a minimum of two shareholders - whether natural or artificial persons- is required. The capital stock shall be divided into transferable titles known as shares. The initial investment for its incorporation must be deposited in a local bank..

General Shareholders' Meetings, Board of Directors and the General Manager are the organs governing the corporation. Bylaws are formalized through public deed and must be recorded with the Public Registry.

Furthermore, we find in the Peruvian regulation two specialized forms of corporations which receive the rules of common corporations: (i) Closely Held Corporations, and (II) Public Corporations.

4.3. Closely Held Corporations

Closely Held corporations resemble the limited-liability companies (see 4.5). They require a minimum of two and a maximum of twenty shareholders. It proposes certain limitations regarding the transference of its shares, such as Right to Preferred Acquisition (in this case admits pact to the contrary), and even the corporation approval (this should be agreed in the bylaws). Shares may not be recorded in the Public Registry of the Stock Market. These type of corporations may or may not have a Board of Directors depending upon the provisions set forth in the by-laws. Similarly, this form of corporation allows virtual Shareholders' Meetings. It is the ideal form of corporation for corporations of small capital stock or of a few shareholders.

4.4. Public Corporations

A Corporation is deemed as public when it complies with at least one of the following conditions:

- The corporation has made a Public Offering (Oferta Pública) of shares or obligations convertible into shares;
- The corporation has over seventy hundred and fifty (750) shareholders;
- Over thirty five percent (35%) of the corporation capital stock is owned by a hundred seventy five (175) or more shareholders. It is not considered within this number the shareholders whose individual shareholding is less than two per thousand (0.002%) of the capital stock or exceeds five percent (5%) of the capital stock of the corporation;
- The corporation is incorporated as public corporation; or,
- When all the voting shareholders unanimously approve the adaptation in to said regime.

The public corporation must record all its shares in the Stock Exchange Public Registry. Moreover, it is subject to the control of the Securities and Corporations Surveillance National Commission (CONASEV).

4.5. Limited Liability Companies

The incorporation of a limited-liability company requires a minimum of two and a maximum of twenty partners. The Limited-liability Company may not issue shares nor have a Board of Directors. The setting-up procedures are the same as those for corporations. In this type of corporation, the right to preferred acquisition exists necessarily.

4.6. Branch

The steps that shall be followed to establish a branch in Peru are similar to those applicable to the setting up of corporations. The setting up of a branch within the Peruvian territory requires to be formalized through the execution of a public deed in Peru. The public deed must contain the following documents and information:

(i) certificate of good standing of the parent company; (ii) copy of the by-laws of the parent company; and, (iii), corporate resolution indicating the following: capital stock that the parent company allocates for the operation of the branch; purpose of the branch, specifying the activities and operations that it will conduct; statement saying that such activities are comprised in the corporate purpose of the parent company; domicile of the branch in Peru; appointment of a least one permanent legal representative in the country; powers granted to him; its submission to Peruvian laws for the purpose of holding the parent company liable for the branch operations in Peru. The nearest Peruvian Consul to the jurisdiction of the parent company's headquarters location must legalize these documents. The Ministry of Foreign Affairs in Lima, Peru must then certify the Consul's signature.

4.7. Partnership Agreements

Partnership agreements are those that create and rule participation and integration relationships for a certain business activity on the mutual benefit of the parties thereto. The partnership agreement does not create a legal entity, must be established in a written document and is not subject to registration in the Public Registry. Partnership agreements may be: (i) Associated Participation Agreement (Contratos de Asociación en Participación) and (ii) Consortium Agreements (Contratos de Consorcio).

Through an Associated Participation Agreement a person, defined as "associating party" (asociante) grants to another person or other persons, defined as "associated party" (asociado), a participation in the results or profits of one or more businesses or companies of the associating party, in exchange for a certain contribution.

In a Consortium, two or more parties form the partnership to actively and directly carry on or participate in a company or in a certain business, for the purpose of obtaining an economic profit.

4.8. Joint Venture

Even though Joint Ventures are not contemplated in the domestic regulation, these contractual forms have been widely spread within the main domestic economic sectors. Joint Venture generates a juridical link among two or more natural or artificial persons wishing to develop certain economic activity, for a specific period of time. Unlike other partnership agreements, this form may generate an independent artificial person.

Without an exact and final definition, Joint Venture is a very versatile legal form, which may be adapted to a variety of situations.

5. TAX REGIME

- **General Provisions**
- **International Agreements**
- **Tax Identity**
- **Income Tax**
- **Value Added Tax**
- **Excise Tax**
- **Financial Transactions Tax**
- **Net Asset Tax**
- **Municipal Taxes (Local Government Taxes)**

5.1 General Provisions

The General Law for the Private Investment Growth develops the constitutional principles of legality and publicity regarding tax issues. It particularly establishes certain restrictions to the local and regional government's capacity to create, amend or abolish taxes.

5.2 International Agreements

Agreements to avoid the Double Taxation have been subscribed with Sweden, Chile, Canada and the country members of The Andean Community.

5.3 Tax Identity

Any subsidiary or branch set-up in Peru shall obtain its Tax Identity (*Registro Único de Contribuyente – RUC*). From a corporate law perspective, there are no limitations to appoint a foreign individual as General Manager. Nevertheless, the Tax Authority requires

the General Manager of a Peruvian company to be a Peruvian citizen or a foreign citizen with a foreign status identity (*carne de extranjería*) in order for he/she be registered as the Peruvian company's legal representative in the *RUC*.

5.4 Income Tax

Resident companies are subject to taxation in Peru on their worldwide income. Branches are taxed only on their Peruvian source income. The fiscal year ends on December 31, and no exceptions are allowed. Annual Income Tax returns for companies, branches and individuals shall be normally filed by March 31 of each year. Estimated monthly Income Tax prepayments are required to be paid based on the monthly turnover.

Until year 2004, price level adjusted accounting was mandatory for Income Tax purposes except for corporations and branches keeping accounting records in foreign currency. Currently, said price level adjusted accounting is suspended.

Expenses incurred in the generation of income or in maintaining its source in productivity conditions are generally deductible for determining the taxpayers income tax base. However, all expenses, except from few specific cases (i.e. interest from credits) deriving from transactions that are carried out, directly or indirectly, with residents of tax haven jurisdictions, are not deductible for tax purposes. Depending on the system chosen by the taxpayer, net losses may be carried forward for four consecutive years as of the fiscal year when net loss is reported, or until the net losses are entirely set-off but with the limitation on the amount of the annual set-off which is 50% of the taxable income reported each year.

The capital gain derived from the transfer of stock and securities is exempt from the income tax until the year 2006. This exemption is applicable where the capital gain is derived from:

(i) the transfer of securities recorded in the Securities Market Public Registry when the transfer is conducted in the stock exchange; and, (ii) the transfer of securities conducted in the over the counter market insofar as the transferor is an individual, an undivided succession or a community property that opted to be taxed as such.

For purposes of the Income Tax, capital gain is defined as the one derived from the transfer of goods which are not earmarked to be traded within the scope of a line of business or an entrepreneurial activity.

The maximum annual depreciation rates for Income Tax purposes are 3% for buildings, 20% for vehicles, 25% for cattle and fishery bets, 20% for new machinery and equipment used by mining, oil and construction industries, 25% for hardware and 10% for other fixed assets.

The corporate Income Tax rate is 30%. Dividends are subject to Income Tax at a 4,1% rate. Royalties paid abroad are subject to a 30% withholding tax rate. Interest paid abroad is subject to a 4,99% withholding tax rate if the related debt and interests meet certain conditions; otherwise the tax rate is 30%. Payments made abroad for technical assistance

services are subject to a 15% withholding tax rate, provided that certain conditions are met; otherwise the income tax rate is 30%.

Local companies that hold foreign investment may apply for tax and legal stability agreements. The investment of profits available for remittance abroad qualifies as foreign investment for this purpose. Tax stability is limited to the Income Tax regime, including the rate in force at the time of the execution of the agreements, except in case of some economic sectors, like Mining and Oil & Gas industries, in which the stability covers other taxes apart from the Income Tax.

5.5 Value Added Tax

A 19% Value Added Tax (Impuesto General a las Ventas - IGV) applies to the following activities:

Sale of movable goods within Peru.
Services performed or used within Peru.
Construction Agreements.
First sale of real estate by the constructor.
Import of goods.

IGV paid upon acquisition of goods or services may be used as tax credit against the IGV that is levied upon the aforementioned transactions.

Exporters are reimbursed any IGV paid on the acquisition of goods and services. In addition, exporters may apply such reimbursement as a credit to offset IGV or income tax liabilities. Any balance may be transferred to third parties.

Enterprises in development stage that import or purchase capital goods and services earmarked to exports or which sale is subject to IGV, may apply to the so called Early Recovery Regime. Such regime consists on the refund by the Tax authorities of the IGV paid on imports or domestic acquisitions of capital goods.

5.6 Excise Tax

The Excise Tax is levied on the following activities:

- The sale in the country at the production stage of certain goods listed in the Excise Tax Law, such as fuels, beers, alcoholic beverages and cigarettes.
- The import of the above mentioned goods.
- Gambling and Gaming of chance, such as lotteries and raffles.

In case of sodas, alcoholic beverages, certain vehicles, cigars, among others, and activities related to gambling and gaming, the applicable tax rate, which is a specific percentage, varies depending on the goods that are subject to the Value System. There is another way of calculating such tax, which is by means of the Value System calculated on the basis of the Sales Price to the Public which is applicable to beers and cigarettes.

5.7 Financial Transactions Tax

This is a temporary tax that is levied on certain financial transactions listed in the law that created it. The law governing this tax provides that all obligations in excess of S/. 5,000 or US\$1,500 shall be paid using the so called "Means of Payment".

Such Means of Payment are only the following: i) deposits in bank accounts; ii) bank drafts or wire transfers; iii) payment orders; iv) debit cards issued in Peru; v) credit cards issued in Peru; vi) credit cards issued in foreign territories by companies the corporate purpose of which is the issuance and administration of credit cards, or by foreign banking or financial institutions, provided that the payments are channeled through a Peruvian banking or financial institution; vii) checks with the "not negotiable" clause or any other equivalent thereto; and viii) others that are approved by means of a Supreme Decree.

Regarding the tax effects, the law establishes that the payments that are made without using the Means of Payment when required by law, will not be deemed as deductible expenses, costs or credits for the purpose of determining the taxable income.

This tax shall be withheld and paid by the Financial Institutions and other companies that intervene in the financial transaction, which are provided by law. It is deductible for the Corporate Income Tax.

It should be noticed that the Financial Transactions Tax will be applicable regardless of the amount of the transaction, that is to say, if the transaction is conducted using any of the Means of Payment without being required to do so (the amount involved is less than S/. 5,000 or US\$1,500) the tax will also apply thereto.

The Financial Transactions Tax rate is 0.08% until December 31st 2006, and it is applicable to the total amount of the financial transaction in either local or foreign currency, without any deduction whatsoever. This tax will be in force until December 31st 2006.

5.8 Net Assets Tax

The Net Assets Tax is a temporary tax that levies on the value of the assets owned by third category taxpayers (in general terms, companies) in accordance with the Income Tax Law.

The 0.6% tax rate of this tax applies to the value of the assets exceeding the amount equivalent to S/. 5 000 000, approximately US\$ 16 200 000.

This tax is effective as of January 1st, 2005 and will be in force until December 31st, 2006.

5.9 Municipal Taxes (Local Government Taxes)

Real Estate Tax: This tax is levied upon the value of all the real estate owned by a legal entity or an individual within a specific district. The tax rate varies depending on the referred value and shall be paid on an annual basis.

Transfer of Real Estate Tax: This tax is levied on the transfer of real estate whether the transfer is made on a gratuitous or onerous basis. The tax rate is 3% which is applied to the value of the real estate to be transferred agreed upon by the parties or the value calculated by the District Municipality where the real estate is located, whichever is higher. This tax shall be paid by the purchaser.

Vehicle Tax: This tax is applied to the vehicles owned by a legal entity or an individual within a district. The tax rate is 1% and is applied to the vehicle original value of acquisition, its value of importation or the value in which the vehicle is recorded in the accounting records provided that the vehicle has a year of manufacture not older than 3 years.

Municipal taxes (passed by the Municipalities)

The Municipalities are only entitled to create, amend or eliminate certain taxes that are related to the services they render or the authorizations they grant.

6. LABOR AND IMMIGRATION LAWS

- **Work Agreements**
- **Remuneration**
- **Termination of the labor relationship**
- **Immigration**

6.1 Work Agreements

General Characteristics of Contracts

Fixed Term Contracts

Hiring through intermediary companies

Outsourcing

Working hours

Weekly rest, holidays and vacations

a) General Characteristics of Contracts

In the rendering of personal, subordinated and remunerated services, the existence of an indefinite term labor contract is presumed.

Hiring national personnel does not require further pre-conditions, except for an age cut-off, which in Peru is 18 years old. Between 15 and 18 years old parents authorization and the approval of the Ministry of Labor (www.mintra.gob.pe) will be required.

National personnel is usually hired for an indefinite term period. In this case it is not necessary to execute a written labor contract.

b) Fixed Term Contracts

Fixed term contracts may only be executed when the specific job is temporary in nature or when it is the beginning of a new corporation activity. Fixed term contracts shall be filed to the Ministry of Labor for registration purposes. The employee is entitled to all the legal benefits during the period of the contract.

c) Hiring through intermediary companies

The general rule is that the personnel shall be hired directly by the employer. However, third companies may provide personnel to the employer only to render the following services:

- Temporary services: occasional services or temporary replacement of personnel.
- Complementary services: services that are not part of the main activity of the employer.
- Highly specialized services: complex and specialized services that are not part of the main activity of the employer.

d) Outsourcing

The employer may hire certain services through third companies by fulfilling the following requirements:

- The hired activities must be at the third company's account and risk.
- The third company must have its own financial, technical and material resources
- The third company's personnel must be under its exclusive subordination.

Additionally, there are other elements to be considered:

- The third company shall have several clients.
- The third company shall have its own equipment
- The payment of the service should not evidence the existence of a personnel's supply.

e) Working hours

Working hours are eight hours per day or 48 hours weekly maximum. Accumulative or atypical work periods are permitted, provided their average is no more than 48 hours a week.

Overtime is paid with an additional 25% over the employee's normal working hour remuneration for the first two hours, and 35% over the employee's normal working hour remuneration for the remaining hours.

Management personnel that are not under immediate supervision and those who perform intermittent services with waiting periods or custody services, are not subject to the work period and therefore are not entitled to overtime.

f) Weekly rest, holidays and vacations

Weekly rest.- Employees are entitled to a minimum of a 24 hour period of rest per week, which normally corresponds to Sunday. They may work on Sunday and take the corresponding day-off on another day of the week.

National holidays.- Employees do not have to render services on holidays provided by law, but they do have the right to earn the salary corresponding to such days. The employer and the personnel may agree to substitute the opportunity of the day-off.

If the employee works on holidays provided by law without the corresponding day-off, the employer shall pay an extra amount of 100% of the daily salary.

Vacations.- Employees are entitled to a 30-day paid vacation for each complete year of services, unless they agree with the employer to reduce, accumulate or break down the vacation period. In no event the vacation period shall be less than seven calendar days per year.

6.2 Remuneration

a) Minimum Wage

The minimum wage imposed by law is S/. 500.00 (US\$ 151). It may be readjusted periodically by the Government.

b) Annual Integral Remuneration

It is possible to settle an integral remuneration per year with the employees that earn not less than two Tax Units (S/. 6800.00) (US\$ 2060.00) monthly. This integral remuneration includes all the legal and contractual benefits in force in the labor center, with the exception of the profit sharing.

c) Bonuses

The bonuses consist in two monthly remunerations, one payable during the first half of July and the second payable in the first half of December, provided that the employee works the complete semester. The bonuses are calculated on the basis of the monthly remuneration received by the employee. If the employee does not work the complete semester, the bonus is paid proportionally.

d) Compensation for the period of time the services were rendered

It is a legal and social benefit consisting in the half-yearly deposit of 8.33% of the remuneration earned each semester. The deposit is made in an account called "CTS Account" in the bank chosen by the employee.

e) Profit Sharing

There is a certain rate of profit sharing, according to the company's business (from 5% to 10%). Companies with less than 20 employees are excluded from the profit sharing rules. There is a limit of 18 monthly remuneration on the yearly amount of profit sharing that may be received by each employee.

f) Life Insurance

The employer is obligated to pay a life insurance for all employees with more than four years of service.

g) Family Allowance

It applies to employees whose remuneration are not regulated by collective bargaining. It consists in the right of an employee to receive an amount equivalent to 10% of the minimum remuneration (that percentage is currently equivalent to S/. 50.00), if he/she has one or more children up to the age of 18 years old.

h) Social contributions and taxes

Remuneration are subject to the following social contributions and taxes:

	Withhold from the salary	Paid by the employer	Rate
Public Pension System or Private Pension System	X		13%
Essalud		X	9%
Income tax for domiciled individuals	X		Employee income is taxed in Peru at an annual progressive rate that starts at 15% for the first S/. 91,800 of net income, ¹ at 21% of net income for amounts from S/. 91,800 to S/. 183,600, and is capped at 30% of net income in excess of S/183600.

According to the employer's activity, remuneration may be subject to other contributions, such as Senati, Work Risk Insurance, Conafovicer, among others.

¹ Under these circumstances, net income is defined as annual gross income of the fifth category minus the permissible annual deduction. Generally speaking, annual gross income of the fifth category is defined as the revenues obtained by the employee, either in cash or in-kind, as a result of his or her labor relationship within a calendar year. The permissible annual tax deduction for individuals who obtain taxable income of the fifth category is the Peruvian equivalent of approximately S/.23,800.00.

6.3 Termination of the labor relationship

If there are objective causes that justify the termination of the labor relationship, there is no need to pay the indemnity, which consists in one and a half (1,5) monthly salary per year of services rendered, up to a maximum of twelve salaries. Due to decisions of the Constitutional Tribunal, employees that are dismissed without any cause, may resign to the indemnity and file a claim before courts demanding their reposition.

In case of a fixed term contract such as the contract applicable to foreign personnel, the indemnity consists in one and a half (1,5) monthly salary per each month that lasts up to the termination of the contract with a maximum of twelve salaries.

6.4 Immigration

a) General Provisions

In case of hiring foreign personnel, it is necessary to execute a written employment contract according to certain formalities and limitations. The Ministry of Labor must approve the contracts entered into with foreign personnel.

The number of foreign personnel shall not exceed 20% of the whole number of employees and the amount of the foreign personnel salaries shall not exceed the 30% of the total amount included in the payroll. The applicable law provides for exceptions to those limitations such as high-level executives of a new company, high-level executives in case of a corporate reorganization, specialized employees, or personnel for companies that have entered into agreements with entities of the public sector.

b) Change of the migratory status within the country

The migratory status corresponding to an employee is that of the resident visa, which is granted by the Immigration Authority ("*Dirección General de Migraciones*") according to the labor contract duly approved by the Ministry of Labor.

If a foreign employee enters the country before he/she has obtained this visa, the employee needs to obtain a business visa in order to change it thereafter into a resident visa by means of following all the necessary formal steps within the country.

c) Tax issues

1. Foreign citizen with business visa

If a foreign citizen with business visa did not obtain any Peruvian source income, he/she must present to the Immigration Authority when leaving the country the corresponding affidavit approved by the Tax Authority.

In case the foreign citizen obtained Peruvian source income, he/she must present to the Immigration Authority the corresponding affidavit approved by the Tax Authority when leaving the country. It must be taken into consideration that the foreign citizen can only

initiate his/her services in the country as an employee once the Ministry of Labor has approved his/her labor contract and the resident visa has been obtained.

2. Tax incomes

Due to his/her condition of foreign employee, the individual is considered nonresident in Peru and is taxed on Peruvian source income only, according to the non-resident income tax criteria. The income tax rate for non-domiciled individuals is a flat 30 percent.

However, income tax regulation states that if the foreign employee decides to be subject to the domiciled regime, he needs to communicate that decision to his employer only if he has been earning fifth category incomes during the previous six months of the tax year when he sends the communication. The change to domiciled regime will be effective as of the following tax year.

When the individual obtains the domiciled condition for income tax purposes, the applicable tax rate is the following: Up to 27 Tributary Impositive Units (Unidad Impositiva Tributaria or UIT² (S/.91,800.00): 15%, for the excess of 27 UIT and up to 54 UIT (S/.183,600.00): 21%, and for the excess of 54 UIT: 30%. The employer withholds the Income Tax and shall pay it to the Tax Authority.

When leaving the country foreign employees with working visa must present to the Migration Authority the evidence of having complied all tax obligations.

7. INTELLECTUAL PROPERTY

Intellectual Property Protection encompasses both industrial property and copyright protection.

Industrial Property protection applies to all economical activities. Every natural or artificial person organized under any form allowed by Peruvian constitution and Peruvian laws is entitled to said benefit, whether domiciled in Peru or not.

Constitutive elements protected by Industrial Property are: (i) inventive patents; (ii) protection certificates; (iii) utility models; (iv) industrial designs; (v) trade secrets; (vi) trademarks and service marks; (vii) collective marks; (viii) certification marks; (ix) trade names; (x) slogans; and, (xi) denominations of origin.

In Peru, Industrial Property is regulated by the Paris Convention, ADPIC, Andean Community Decision 486 and Industrial Property Law (Legislative Decree No. 823).

Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual - INDECOPI (National Institute for Defense of Competition and Intellectual Property Protection) is the authority in charge of keeping record of industrial property element registrations and modifications as well as of supervising their correct use.

² The Tributary Impositive Unit for the exercise of 2006 is S/.3,400.00 (US\$1,014.93 approximately).

Patents are granted to inventions, whether related to products or procedures in every field of technology, provided that they are new, have an inventive level and are subject to industrial application. Patents have a validity term of twenty years from its application filing date, after that period, invention becomes of public domain. Patents may be licensed for its exploitation only by means of a written contract. Said contract must be recorded before the competent authority, otherwise, they would no have effect before third parties.

Likewise, according to the pertinent legislation, the titleholder of a patent or the person who considers himself as entitled to own that Patent Registration, may initiate repossession and/or indemnificatory actions as conferred by law with the purpose of making their right valid.

We consider Utility Model to any new form, configuration or arrangement of elements which allows a better or different functioning, use or manufacturing to any appliance, tool, instrument, mechanism or any other object or to any of its parts. Similarly, those providing a new use, advantage or technical effect. Utility models have a validity of ten years from the application date, after that period the utility model becomes of public domain. Utility models can be licensed.

Industrial Design is any group of lines or combination of colors or any two or three-dimensional form incorporated to an industrial product or craft to provide it with a special appearance, without changing said product use or objective and may be used as prototype or pattern for its manufacture. Industrial designs are valid for ten years from its application date. After that period, the industrial design becomes of public domain. Industrial designs may be transferred or licensed.

Trademarks and service marks must be recorded before INDECOPI to acquire legal protection. Its registration must be done in accordance with Niza International Classification. After completing its registration, competent office grants a Registration certificate conceding the titleholder exclusive rights over the trademark for a 10-year-term.

Registration certificate may be renewed between the 6-month-period before and after expiration date.

If a registered trademark had not been used in Peru or in any other Common Andean country member by its titleholder or a licensee during three consecutive years, the said trademark may be cancelled by any third party having a genuine interest.

Similarly, the competent office may decree ex officio or upon petition of an interested party, the invalidity of a trademark registration, whenever registration had been granted:

(i) contravening any Industrial Property provision; (ii) based on data or documentation contained in its application form deemed as essential which was declared wrong or inexact by the national competent authority and; (iii) in bad faith.

Trade names do not require to be registered in order to be protected. Notwithstanding, protection of a non registered trade name is circumscribed to the geographical area in which it is used.

Any owner of Industrial Property rights may file action for infringement against the person who infringes his rights, without prejudice of any other civil or penal actions to which he may be entitled.

Copyright protection applies to all ingenious work within literary or artistic scope, whatever its classification, way of expression, merit or objective. Copyright is compatible with:

(i) industrial property rights conferred to work; and, (ii) related rights and other intellectual rights recognized by legislation. In case of conflict, what supersedes is that which favors the author.

In Peru, Rome Convention, Andean Community Decision 351 and Copyright Law (Legislative Decree No. 822) rule copyright.

As well as in Industrial Property case, INDECOPI is the authority in charge of keeping copyright records and its modifications, and of supervising its correct use.

As per legislation, protected works are:

(i) literary work expressed in written, by means of books, magazines, leaflet or any other writs; (ii) literary work expressed orally, such as conferences, allocutions, sermons or didactical explanations; (iii) musical compositions with or without lyrics; (iv) dramatic work, drama-musical work, choreographic, pantomimic and scenic works in general; (v) audio visual work; (vi) plastic art work, whether applied or not, including its drafts, drawings, sculptures, carvings and lithography; (vii) architecture work; (viii) photography work and those expressed by means of any photography related proceeding; (ix) illustrations, maps, designs, blueprints, schemes and other plastic work related to geography, topography, architecture or science; (x) slogans or phrases containing a literary or artistic expression possessing originality characteristics; (xi) software; (xii) anthologies or compilations of different works or folklore expressions, and database, provided said collections are original because of its selection, coordination or arrangement; (xiii) news articles, whether present time events or not, reports, editorials and comments; and, (xiv) in general, any other intellectual production within literary or artistic domain possessing originality characteristics and susceptible of being divulged or reproduced by any means or proceedings, known or to be known.

Copyright as recognized in Peru is independent to the property of the material object to which the work is incorporated and its use or exercise is not subject to registration requirement or any other formality compliance.

Patrimonial rights endure throughout the author's life and seventy years after its death, whichever origin country the work may have, and it is transmitted by cause of death as provided by Peruvian Civil Code.

Patrimonial right may be transferred by mandate or legal presumption, by means of transfer between alive people or by mortis cause, in any of the ways provided by law.

A copyright titleholder may initiate infringement action against those who infringe its rights, without prejudice of any other civil or penal action to which he may be entitled.

8. FREE AND FAIR COMPETITION

Concentration acts do not depend on an authorization from the antitrust authority, which in Perú is the Free Competition Commission of INDECOPI. By exception, concentration operations that involve companies that perform generation, transmission and electric distribution activities are subject to scrutiny by the aforementioned authority. In such cases, the antitrust authority analyzes the operation involving concentration and if it deems that it may reduce, damage or prevent competition may subject it to special conditions or even prohibit it .

On the other hand, acts or conducts related to economic activities that may result in an abuse of a dominant position in the market or which restrain, limit or distort free competition, are forbidden and subject to penalties.

Acquiring a dominant position is not forbidden but the abuse of such position.

According to the Law of Repression of the Unfair Competition, any conduct that is contrary to commercial good faith and to correctness norms that shall rule economic activities, is forbidden.

9. INTERNATIONAL TRADE

- **Guarantees**
- **Regime**
- **Integration Treaties**

9.1 Guarantees

By Legislative Decree 668 in force since October 1991, the Peruvian State approved a regime in order to guarantee the freedom of international and national trade.

It guarantees all economic agents free access to acquisition, transformation and trade of both raw material and final goods.

It eliminated and banned all kinds of exclusivity, limitation, or any other forms of restriction or monopolistic practices in the production and trade of goods and services.

In accordance with the Constitution, freedom of possession, use, and disposition of foreign currency and free convertibility of national currency by a fixed exchange rate is guaranteed.

The imposition of excessive fees is prohibited, as well as aliquots and any other fee, except for customs rights and taxes applicable to the local sale of products. Licenses, decisions, registers, and certifications are forbidden and so is the establishment of tariff restrictions for the local or international trade.

9.2 Regime

According to the above mentioned provisions, foreign trade in Peru is free.

The Customs Law and its regulations provide the legal regime for import and export proceedings. No restrictions apply to the import or export of goods. By exception, due to security and public health reasons, the import of certain goods is prohibited (i.e. animals, waste, pesticides, used goods, etc). The prohibition shall be based on the law.

In general, import is subject to the payment of *Ad Valorem* CIF customs duties and General Sales Tax (Value Added Tax).

Customs duties for the import of goods have two rates: 12% and 20%. Exceptionally, rates of 4% and 7% *Ad Valorem* apply to some assets (machinery and equipment).

The World Trade Organization's regulations on customs valuation are applicable to the import of goods into Peruvian territory.

The Customs Law rules proceedings to facilitate foreign trade, allowing the import of goods without paying customs duties and taxes if such goods are transformed and reexported within a certain period of time. (i.e. regimes of "temporary admission for asset improvement" and "replacement of exempted merchandise").

Also, the Customs Law provisions on temporary regimes authorize to import goods free of customs duties and taxes for an specific purpose or use within a certain period of time and reexport them without transformation ("temporary admission")

A drawback regime allows exporter to recover (partially or in full) customs duties paid in the import of raw materials and spare parts, provided that CIF value does not exceed 50 percent of the FOB value of exports.

Peruvian legislation also regulates free zones ("*zonas francas*") defined as portions of the territory which by a legal fiction are considered to be located outside the Peruvian territory. Therefore, no duties and taxes are levied upon the goods imported into such zones.

9.3 Integration Treaties

Peru is currently part of the Andean Community. At the same time, there are also other trade agreements executed with other countries under the Latin American Integration Association's (ALADI) rules.

Andean Community: Under Decision 414, Peru has agreed to follow a specific schedule aimed to a total tariff reduction by the end of the year 2005 for all merchandise originally from Bolivia, Colombia, Ecuador and Venezuela. There are also bilateral trade agreements between Peru and each of the aforementioned Andean Community Member Countries. In case these latter agreements grant a more favorable treatment to the import of any merchandise originally from any other Member Country than the one applicable under Decision 414, the most favorable treatment will prevail.

Peru is currently committed to accelerate the maturity of this process. Negotiations have also been taking place to adopt the External Common Tariff of the Andean Community Member Countries.

South America Common Market (MERCOSUR): Peru, together with other Andean Community Member Countries - Colombia, Ecuador and Venezuela-, has entered into trade agreements with Brazil and Argentina, both MERCOSUR Member Countries.

It is important to mention that Peru is a founding member of the World Trade Organization (WTO). Therefore, the WTO's regulations regarding antidumping practices, subsidies and countervailing duties, service market liberalization, among others, are applicable within the country.

The Andean Trade Promotion and Drug Eradication Act (ATPDEA) came into effect on October 1, 2002, prompted by U.S. President George W. Bush's administration to renew the Andean Trade Preference Act (ATPA) signed in 1991. This mechanism provides preferential treatment to Peru, Bolivia, Ecuador and Colombia, in order to foster the production industries through the export of a variety of goods to the U.S. market. It allows the tariff-exempted entry to the United States of America of new products, most of them textiles and garments made with cotton from the referred countries, and will be the key to the growth of exports and the creation of new employment in the country. Currently it is in force until 2006.

Peru has just completed the negotiation process for a Free Trade Agreement with the United States of America. What follows is the draft and publication of the texts, so that they can be signed and submitted for its ratification.

10. SECTORS

- **Agriculture and Agroindustry**
- **Bank and Finance**
- **Energy**
- **Mining**
- **Fish Industry**
- **Telecommunications**
- **Transport and Infrastructure**
- **Environment**

10.1 Agriculture and Agroindustry

Legislative Decree 653, Law for the Fostering of Investment in the Agricultural Sector, in accordance with Law No. 26505, establishes the freedom of development of agricultural activities, taken forth by both individuals and legal entities, either local or foreigner. There are no maximum limits for land property. In this sense, land property for agriculture may be freely transferred and used as collateral, without any prior consent of the State.

Furthermore, there are no legal or administrative restrictions that limit the installation, functioning, operations or commercialization of products derived from investment in agro-industrial activities. The prices of agrarian products are set by local market conditions.

The use of water for agricultural purposes, of any origin whatsoever, is conditioned to the availability of said resource and the actual need of the purpose for which it was intended. The administration of the water corresponds to the State, that assigns its use to private entities through licenses.

The Ministry of Agriculture (www.minag.gob.pe) is responsible of prompting all the necessary actions to achieve an efficient use in Peru of the hydric resources for agricultural purposes, and supervise its use in the different hydrographic basins located in the country.

Regarding existing tax benefits in the agricultural sector, Legislative Decree 885, Law for the Fostering in the Agricultural Sector, states that there is a 15% Income Tax rate on all third category income, for individuals and legal entities that cultivate and breed in the agrarian sector. However, activities conducted in the forestry, agroindustry and aviculture industries do not benefit from this tax rate.

Regarding General Sales Tax (VAT), individuals and legal entities that cultivate and breed in the agrarian sector (with the exception of those that developed forestry, agroindustry and aviculture activities) are in the pre-productive stage of their investments, may obtain an early recovery of the Sales Tax paid for the acquisitions of capital asset, raw material, services and construction agreements. The pre-productive stage of the investments may in no case exceed 5 years.

Finally, in accordance with Law No. 26865, tax benefits mentioned above are only in effect through December 31, 2006. There is no guarantee that such benefits will continue to be in effect after such date.

10.2 Banking, Insurance and Finance

10.2.1 Banking and Insurance

The regulations related to banks and financial institutions are included in the General Law of the Financial and Insurance Systems (*Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros*).

Foreign investment in the companies pertaining to the financial and insurance systems authorized to operate in Peru and its subsidiaries receives the same treatment as local investment, subject, as applicable, to the international treaties related to this matter.

The Banking, Insurance and Pension Fund Private Administrators Superintendence (*Superintendencia de Banca y Seguros*) (www.sbs.gob.pe), an autonomous entity created by the Constitution, is the authority in charge of authorizing and supervising the activities

of banks, financial institutions, insurance companies and Pension Fund Private Administrators. In Peru, the authorization from the Banking and Insurance Superintendence is required to perform activities implying the procurement of money from the public. In addition, companies willing to sell insurance in Peru shall obtain the prior authorization from the Superintendence.

Foreign investors may either establish a bank or a branch or designate a representative office. Banks may only be established as a corporation (*sociedad anónima*) or as a branch of a foreign bank.

Representative offices are established by foreign banks to maintain commercial relations with other banks operating in Peru, with the purpose of fostering foreign trade and providing foreign financing, as well as other services. Representative offices may not receive deposits from the public nor carry out operations or provide services pertaining to the activities performed by the foreign bank.

Foreign investors may establish an insurance company in Peru or appoint a representative. Insurance companies shall also be incorporated as a corporation (*sociedad anonima*).

Interest rates, commissions and expenses for operations and services are freely determined by the companies pertaining to the financial system. In addition, insurance companies may also freely determine the conditions of the policies, their tariffs and other commissions. Currently, there is no regulation in Peru which prohibits or limits the granting of credits by foreigners.

10.2.2 Finance

Currently, there is no law which prohibits or limits the granting of credits by non domiciled persons. In this sense, non domiciled creditors and debtors have flexibility to agree upon the terms and conditions under which the credit is to be granted.

In connection with the security interests to secure the fulfillment of the obligations borne by the debtor, parties may agree upon the creation of personal security interests or security interests in rem, such as bonds (bails), mortgages, pledges, security interests over cash flows, mortgages over infrastructure concessions, letters of credit, among others. Moreover, it is also possible to agree upon more complex security interest as it is the case of trusts.

Parties may agree in the credit agreements the submission to a foreign law. They may also agree to submit the solution of any controversy to a foreign court or to a local or international arbitration.

Regarding the Income Tax applicable to credits granted by non-domiciled parties in Peru, payment of interest on external credits is subject to a 4,99% withholding tax which will be applied so long as the requisites provided by the Income Tax Law are complied with. If any of the requisites is not satisfied, interest payments will be subject to taxation at a 30% withholding tax rate.

For Peruvian Income Tax purposes, all expenses and commissions, premiums and any other sum payable in addition to interest agreed upon, paid to the foreign beneficiary, will also be considered as interest.

In addition, payment of interest to non-banking, non-financial or non-credit institutions is subject to the Value Added Tax at a rate of 19%.

10.3 Electricity and Hydrocarbons

10.3.1 Electricity

As from the Law of Electric Concessions approved by Law Decree 25844, in November 1992, is in force, all reservations and restrictions to private investment in the electric sector were brought to an end.

Electric activities are divided into Generation, Transmission and Distribution. In order to carry on generation activities with hydraulic and geothermal resources (with an installed power of more than 1mw), transmission activities (when it is required to affect state-owned goods and easements), and distribution activities (over 500kw), a concession is required. In all other cases only proper authorization is required. Concessions and authorizations are obtained before the Ministry of Energy and Mining (www.minem.gob.pe).

Today there is a national interconnected system that links all installations in all of the country. Some isolated systems still exist. There is a Economic Operation Committee (COES) (www.coes.org.pe) of the referred system made up of the generators and transmitters for the purpose of coordinating their operations at the cheapest possible cost, guaranteeing the electric energy supply, and the best possible way to take advantage of the energy resources.

Tariffs and compensations to holders of the transmission and distribution systems, the sale of energy to distribution concessionaires aimed for public electricity service and, the transfer of power and energy in the COES are all subject to price regulation. For these purposes, public electricity service is defined as the power limits equivalent to 20% of the maximum demand of the area of the distribution concession up to 1000kw.

Regulated prices and tariffs are approved by the regulatory entity OSINERG (www.osinerg.gob.pe). This entity is also responsible of the supervision of the fulfillment of the legal and contractual obligations of electric activities.

There are limits to operations regarding the concentration of electric activities, including both vertical and horizontal concentrations, requiring for such cases the authorization of the Antimonopoly Authorities (Free Competition Commission of INDECOPI).

10.2.3 Hydrocarbons

The Peruvian Hydrocarbons Law , among others, regulates the following hydrocarbons activities in Peru: exploration, production, transportation, distribution and natural gas

processing plants. The State fosters the development of such activities based on free competition and free access to them.

The policy on hydrocarbons is proposed by the Ministry of Energy and Mining (www.minem.gob.pe). Hydrocarbons are owned by the State. PERUPETRO has been created as a state entity that holds this right and fosters the investment on activities involving exploration and exploitation of hydrocarbons. Said entity negotiates and supervises the agreements entered into in connection with such activities.

The exploration and exploitation are taken forth through either license or service agreements. In the license agreement the State transfers the extracted hydrocarbons in exchange of royalties. In the service agreement, the State pays a retribution in exchange of the services. Exploration agreements have a 7 year term (exceptionally, the term may be extended up to 3 years) and exploitation agreements have a 30 year term for oil and a 40 year term for natural gas.

The exploitation and economic recovery of the hydrocarbon reserves are carried on according to technical and economic principles generally accepted by the international hydrocarbon industry, as well as in compliance with environmental regulation.

Holders of licenses have the freedom to use the hydrocarbons, which according to the contract correspond to them and may export them free of taxes. Holders of licenses are granted with a certain easiness in the customs proceedings of import of goods and raw material for exploration and exploitation.

Transportation, distribution and commercialization of hydrocarbons are subject to the regulations approved by the Ministry of Energy and Mining. The transportation and distribution of oil and gas through pipelines requires the granting of a concession.

All activities related to hydrocarbons are subject to the supervision of OSINERG.

Law 28109 (December 2003) promotes investment on the exploration and exploitation of marginal resources and reserves of hydrocarbons, through the reduction of the royalties in the license agreements or, the increase of the retribution in the service agreements.

The most important project of the Peruvian oil and gas industry is the development of the Camisea gas fields (Blocks 56 and 88), which holds one of the most important natural gas reserves in the Latin America Region.

For purposes of promoting the participation of private investment on the Camisea Project and for developing the potential of the natural gas industry, the Peruvian Government has passed several laws and regulations intended to provide investors with the necessary tools for fostering this industry.

This includes, among others, Law for the Promotion of the Natural Gas Industry, which set several conditions for fostering the investment of production and developing of a gas transportation and distribution pipelines, as well as for the creation of a natural gas market, and Law for Promoting Investment in Natural Gas Processing Plants, passed to grant legal and tax benefits in order to promote the investment in natural gas processing plants, such as those used for the production of liquefied natural gas (LNG).

Likewise, several regulations have been passed in order to promote the use of natural gas by local industries, residential consumers, and public transportation. In the case of transportation, the Peruvian Government has declared of national interest the use of natural gas for vehicles (GNV).

10.4 Mining

The development of mining activities in Peru is subject to the provisions of the General Law of Mining (hereinafter, "the Law").

In accordance with the Law, mining activities (except from search, prospection and trade) shall be carried on exclusively through concessions, which are granted by the National Institute of Concessions and Mining Cadastre (www.inacc.gob.pe). The concession provides its holder with the exclusive right to take forth a specific mining activity, within a determined area. The Law distinguishes four kinds of concessions: (i) Mining concession; (ii) Benefit concession; (iii) General work concession; and (iv) Mining transport concession.

The concessions shall be registered in the Public Mining Registry, which is part of the National Public Registry System.

The holders of concessions or mining requests (expectative rights in process) shall comply with several obligations, including the payment of the *Derecho de Vigencia* (Right of Validity) (US\$ 3.00 per applicable hectare, for both mining concessions and mining requests), taking into account that failure to fulfill such obligation for two (2) consecutive years entails the expiration of the mining concession or the mining request.

Likewise, the titleholders of the mining concessions shall comply with the Minimum Annual Production or by default, the payment of a penalty provided by the Law (US\$ 6.00 per year per applicable hectare), both applicable only for mining concessions. The non-fulfillment of this obligation for 2 consecutive years entails the expiration of the mining concession.

The titleholders of mining concessions shall execute, from the beginning of their operations, a Mining Closure Plan, which shall contain the measures that will be taken in order to restore the areas, labors and facilities of each mining unit they are going to operate. The titleholder of mining activities shall secure the entire fulfillment of the restoring measures contained in the Mining Closure Plan through guarantees under any of the following forms:

(i) the ones contained in the General Law of the Financial and Insurance Systems, among which the letter of guaranty and the caution policy are considered, (ii) cash; (iii) guarantee trusts, and (iv) those guarantees indicated in the Civil Code.

In addition, pursuant to the Mining Royalty Law, the titleholders of mining concessions must pay to the State a mining royalty for the exploitation of natural resources. The mining royalty is calculated using the value of the concentrate, according to the prices of the international market. The Mining Royalty Law establishes the ranges on the mining royalty.

There are special rules applicable to legal stability agreements entered into by mining companies. The mining legal regime includes two kinds of investment guarantee agreements that basically differ from each other in the term of the guarantee (10 and 15 years, respectively) and in the minimum amount agreed to invest. In both cases, in order to execute said agreement, the mining producer shall submit an Investment Program (for 10 year contracts) or a Feasibility Report (for 15 year contracts) to the Ministry of Energy and Mining for its approval.

In the case of the 10 year guaranteed agreement, the Investment Program shall include a minimum investment commitment of US\$ 2 000 000 and a production of 350 to 5 000 TM/day.

In the case of the 15 year guaranteed agreement, the Feasibility Report shall include a minimum investment commitment of US\$ 20 000 000, in case of a company starting its operations, and US\$ 50 000 000 in the case of an existing company.

The legal regime stabilized through these agreements is the one in force at the time of the approval of the Investment Program or the Feasibility Report. This regime is the one that will remain unmodified for the mining company during the term of said agreement, obtaining legal stability in different matters. It must be noted that in case the Income Tax is stabilized, the applicable rate will be the one in force at the time of the signature of the agreement plus two points. In addition, the titleholders of the mining concessions that are at the exploration stage, will have the right to the definitive recovery of the General Sales Tax paid for the performance of their activities during this stage.

10.5 Fishing Industry

The fishing activity is regulated by the General Fishery Law (Decreto Ley 25977). The State is the one that runs the affairs of and assigns the rights to exploit all natural hydrobiological resources of the ocean and the continental waters. It also authorizes the practice of industrial and acuiculture activities related to the best use of the hydrobiological resources. The competent authority in this sector is the Ministry of Production (www.produce.gob.pe).

The Constitution establishes that the State's sea domain includes the sea adjacent to its coasts, as well as its soil and its subsoil, to a maximum distance of 200 miles counted from the baselines provided by law.

For the development of the fishing activities, individuals and legal entities have four types of rights granted by the applicable authority to access hydrobiological resources, which are the following:

- a) For the purpose of the usufruct of the state owned fishing infrastructure, as well as for the acuiculture practiced on public domains, depths or marine or continental waters, a Concession is required.

- b) For the purpose of the development of acuiculture on private lands; practicing research activities, the increase of the fleet, as well as for the settlement of industrial fishing establishments, Authorization is required.
- c) For the purpose of operating Peruvian flag fishing ships, as well as for the operation of foreign flag fishing ships, Fishing Permit is required.
- d) For the operation of factories for processing fishing products a License is required.

The Concessions, Authorizations, Fishing Permits and Licenses, are specific rights that the Ministry of Production grants for a fixed term for the performance of fishing activities. In order to keep them in force, the holders of such rights activities shall comply with certain obligations within the terms provided by law.

10.6 Telecommunications

Since mid-nineties, all public telecommunication services (fixed and mobile telephony, long distance carrier, cable television) in Peru are provided by private companies under free competition conditions. Telecommunication markets are open and there are no restrictions regarding the participation of foreign companies or individuals (except for broadcasting services), nor in the number of operators in any service or market. The exception is restrictions due to limited availability of spectrum. Market and services conditions are regulated by the Guidelines for the Opening of the Peruvian Telecommunications Market, Telecommunications General Law and its regulations.

OSIPTEL is the Regulatory agency in charge of monitoring market conditions (www.osiptel.gob.pe) and the Ministry of Transport and Communications grants concessions for rendering telecommunication services and authorizations for the use of the spectrum.

In order to provide public telecommunication services (i.e. carrier, fixed and mobile telephony), operators shall obtain a telecommunications concession granted by the government after an administrative proceeding and execution of a concession contract. Value Added Services –VAS- providers must register at the Ministry of Transport and Communications (www.mtc.gob.pe). Internet access is considered as a VAS. Reselling of traffic and telecommunications services is also allowed requiring the prior registration with the referred Ministry.

Satellite service providers are required to register with the Ministry of Transport and Communications in order to be able to provide satellite capacity services to local clients, who must hold concessions or authorizations granted by the Ministry.

Interconnection is mandatory for all telecommunication concessionaires according to the correspondent regulations that include access to essential facilities. If parties do not agree on the terms and conditions of interconnection the regulator may issue an order establishing them. Dominant operators and non-competitive markets are subject to tariff regulation.

In order to promote the provision of telecommunications services in low served areas, as well as for facilitating the entrance of new operators, several laws and rules have been passed, among them the Law that regulates the sharing of network facilities (such as transmission sites, ducts, poles) for the provision of telecommunications services; the rules for obtaining mandatory easements that will enable operators to display their telecommunications networks in their service areas; the rules for telecommunications services with interoperability.

Non solicited commercial electronic messages (SPAM) is regulated. The applicable rules establish the requirements that senders of non solicited commercial electronic messages that qualify as SPAM must comply.

10.7 Transport Infrastructure

Peru has a Concession Law and a regulatory framework that fosters private investment in public transport infrastructure using the legal mechanism of granting concessions to private operators. Concessions allow companies to operate railways, ports, airports and highways within a fixed term no longer than 60 years.

Under this regulation the property of the state-owned infrastructure and assets is not transferred to private operators, who have the right of economic use over them (e.g. collect tolls). In exchange, they are required to pay a fee and to invest in the assets, making improvements and constructions. Concession contracts may include tariffs and pricing rules. When the concession term elapses the operator shall return the infrastructure with its improvements to the government.

Access to transport infrastructure considered as an essential facility is mandatory according to the correspondent regulations.

Currently the International Lima Airport, the Matarani port, the Ancon--Huacho--Pativilca highway and the Cuzco--Machu Picchu Railway, among others, are operated by concessionaires.

Public transport infrastructure regulator is OSITRAN (www.ositran.gob.pe).

Ministry of Transport and Communications grants authorizations for rendering transport services in the infrastructure.

10.8 Environment

According with the Peruvian Constitution, the State determines the National Environmental Policy.

The General Environmental Law rules environmental protection. This law establishes that the purpose of the environmental policy is to improve the people's quality of life, guaranteeing the existence of healthy, viable and functional ecosystems, as well as the sustainable development of the country. It works through the prevention, protection and

recovery of the environment and its components, the conservation and the sustainable use of natural resources, in a responsible manner, in accordance with the protection of the fundamental rights of the people.

Regarding, environmental obligations of the companies that want to execute new projects, the Law for the Private Investment Growth states that the corresponding Sector Authorities shall determine the activities that because of their environmental risk could exceed the tolerable levels or standards of contamination or deterioration of the environment. In case of projects that involve said activities, an Environmental Impact Assessment (EIA) must be previously elaborated. Such EIA shall contain a description of the proposed activity, as well as the foreseeable direct or indirect effects of this activity in the physical and social environment, in both the short and long term, with the technical evaluation of such. In Addition, the EIA shall indicate the precaution and control measures to be applied in order to obtain a harmonious development between the project and the environment.

Pursuant to the General Environmental Law, Environmental Impact Assessment (EIA) shall only be prepared by public or private entities duly qualified and registered with the competent authority.

EIA's shall be approved by the Competent Sector Authority. It is necessary to previously obtain the favorable technical opinion of the Ministry of Agriculture, through the National Institute of Natural Resources (INRENA) (www.inrena.gob.pe).

10.9 Tourism

The Tourism Development Law (No. 26961) ("Tourism Development Law") and the regulations thereunder (approved by Supreme Decree No. 002-2000-ITINCI), set forth the basic principles for the development of tourism in Peru.

The role of the government in contributing to the national identity and integration process and in encouraging the development of infrastructure and the quality of tourism services is clearly laid out in the Tourism Development Law. The Department of Commerce and Tourism (commonly known in Peru as "MINCETUR") is the entity responsible for the development of tourism on a nationwide basis. In addition, a Tourism Committee has been created which is composed of representatives of entities related to tourism (www.mincetur.gob.pe).

Through Supreme Decree No. 010-93-PCM, the Promotion Committee of Peru (PROMPERU) came into existence. This entity is responsible for diffusing the reality and image of Peru on an international level, as well as promoting Peru's image on tourism-related matters (www.peru.org.pe). Finally, the foregoing laws set forth the entities that are responsible for protecting and managing the Peru's cultural and natural patrimonies. This duty falls on the National Cultural Institute (www.inc.gob.pe) and on the Natural Resources National Institute (www.inrena.gob.pe), as well as other public and private entities that engage in these activities.

The Tourism Development Law also describes the companies that qualify as services providers, some of which are travel and tourism agencies, lodging establishments, casinos, and restaurants.

In addition, Supreme Decree N° 022-91-ICTI-TUR states that it is a national duty to protect tourists, whether domestic or foreign, in their development of activities within Peru. As a result, domestic and foreign tourists are treated equally when traveling in Peru. Likewise, as a matter of public policy, students, teachers and retired individuals are granted special rates in tourism related activities.

According to the foregoing laws, MINCETUR is able to propose *sua sponte*, or pursuant to requests, that certain potential tourist areas that require special protection from the government be declared "Tourist Reserve Zones". The classification of an area as a Tourist Reserve Zone does not limit the development of other economic activities and the taking advantage of such regulated areas, as long as the rules and regulations set forth by MINCETUR are respected.

Furthermore, the Entities of International Commerce and Tourism from the Regional Government and the Municipality of Lima are responsible of enforcing the Travel and Tourism Agencies Regulations (DS N° 026-2004-MINCETUR), as well as granting authorizations to the tourism and travel agencies

The duties of the Travel and Tourism Agencies include promoting national and international tourism, the contracting of tourist guides, the rental of transportation needed by tourists for their transportation, etc.

In connection with the tourism industry, Supreme Decree N° 029-2004-ITINCI regulates Lodging Establishments.

This regulation states that the regional entities of International Commerce and Tourism of the Regional Government and the Municipality of Lima are responsible for enforcing the Travel and Tourism Agencies Regulations.

These entities also classify and categorize Lodging Establishments, verify fulfillment of legal requirements and conduct spontaneous on site supervision. The Travel and Tourism Agencies Regulations also establish the minimum requirements in order to obtain the categorization and classification of hotels, apart hotels, resorts, ecolodges and hostels.

Additionally Supreme Decree N° 025-2004-MINCETUR regulates restaurants and their operations. It is also the responsibility of the regional entities of International Commerce and Tourism of the Regional Government and the Municipality of Lima, to determine the category of the restaurants, supervise their operation and spontaneous conduct on-site supervision. The regulations set forth the requirements, conditions and other characteristics necessary to categorize restaurants between 1 and 5 stars, depending on the services they provide.

Finally, there are several agreements between Peru and other countries with the purpose of facilitating the promotion and cooperation of tourism. Countries with whom Peru has signed agreements include Mexico, Costa Rica, Guatemala, Dominican Republic, Panama, Thailand, Rumania, El Salvador, Italy, Hungary, China and the members of the

Latin American Association of Integration (ALADI) which include Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Uruguay and Venezuela.

11. MOST IMPORTANT COMPANIES IN PERU

SECTOR	CORPORATIONS
Trade	ALLARD LABORATORIES INC., AIWA INTERNATIONAL INC. (USA) ABBEY LIFE INTERNATIONAL (UNITED KINGDOM) ALDEASA (SPAIN) BAKER HUGHES MINING TOOLS INCORPORATED, CARGILL AMERICA INC (USA) COCA COLA INTERAMERICAN CORPORATION, DISNEY ENTERPRISES INC., KELLOGG COMPANY, POLAROID CARIBBEAN CORPORATION, READER'S DIGEST LATINOAMERICA S.A., SMITH KLINE & FRENCH INTERAMERICAN CORPORATION, ENGELHARD ENERGY CORPORATION, GENERAL ELECTRIC COMPANY, GENERAL MOTORS CORPORATION, GENERAL PETROLEUM COMPANY INC. (USA); GLAXOSMITHKLINE INTERNATIONAL (LUXEMBOURG) S.A (LUXEMBOURG); L'OREAL S.A. (FRANCE); MITSUI & CO. LTD. (JAPAN)
Services	MCDONALD'S CORPORATION (USA), XEROX CORPORATION (USA) APPEX INC., BRINK'S INCORPORATED, BUTTHUAM NARESUAN, CATERPILLAR INTERNATIONAL SERVICES CORPORATION, CINEMARK INTERNATIONAL INC., CONTINENTAL SHELF ASSOCIATES INC. (USA); BARSEC INTERNATIONAL LIMITED (UNITED KINGDOM) BRADLEY BROS LTD., EAGLE MAPPING SERVICES LIMITED CANADA (CANADA); ANTENA X DE TELEVISION S.A., ATOS O.D.S. S.A., (SPAIN); CHINA NATIONAL IMPORT AND EXPORT COMMODITIES INSPECTION CORP (CHINA)
Industry	A.B. VOLVO (SWEDEN); ABBOTT INTERNATIONAL LTD., ALBATROX S.A.; ASSEA BROWN BOVERI (SWITZERLAND) BAXTER WORLD TRADE CORPORATION, CRYOVAC INTERNATIONAL HOLDINGS INC., GOODYEAR INTERNATIONAL CORPORATION, J.P.MORGAN INTERNATIONAL CAPITAL CORPORATION, PARKE DAVIS INTER-AMERICAN CORPORATION, PFIZER INTERNATIONAL CORPORATION, R.J. REYNOLDS TOBACCO CO., JOHNSON SHAREHOLDINGS, INC. (USA); ADIDAS CHILE LIMITADA (CHILE); B. BRAUN

	MELSUNGEN A.G., BRAUNE & WARNSLOH (GERMANY); BAYER FOREIGN INVESTMENTS LTD. (CANADA); BLANSJAAR A.G., NESTLE S.A. (SWITZERLAND); HONDA MOTOR COMPANY LTD., TOYOTA MOTOR CORPORATION, (JAPAN); THE TURKISH TOBACCO COMPANY (ARGENTINA) BRYSTOL MYERS SQUIBB COMPANY (USA) DAEWOO CORPORATION (KOREA)
Telecommunications and Information Technology	AUDIOVOX COMMUNICATIONS INTERNATIONAL INC, AT&T INTERNATIONAL INC., BEAR STEARNS & CO. INC. (USA); MILLICOM HOLDING PERU NV, NOKIA FINANCE INTERNATIONAL B.V. (NETHERLANDS); NEXTEL INTERNATIONAL (PERU) LLC., BELLSOUTH PERU BVI LIMITED (UNITED KINGDOM); TELMEX T.I. TELEFONICA DE ESPAÑA (SPAIN), ALCATEL STANDARD ELECTRICA (SPAIN) AMPER SA (SPAIN) MOTOROLA INC (USA)
Banking and Insurance	AETNA INTERNATIONAL (USA) BANCO STANDARD CHARTERED PERU (ENGLAND); BANCO BILBAO VIZCAYA (SPAIN) BANCO SANTANDER (SPAIN) BANKBOSTON N.A., CITIBANK N.A. (USA); BANQUE SUDAMERIS (FRANCE); CHASE MANHATTAN INTERNATIONAL FINANCE LIMITED ING BARING, INTERNATIONAL MERCHANT BANK (UNTIED KINGDOM); COMPAÑIA ESPAÑOLA DE SEGURO DE CREDITO A LA EXPORTACION S.A. (SPAIN)
Other Services	BIVAC INTERNATIONAL S.A., (FRANCE); BUREAU VERITAS BIVAC A.G. (SWITZERLAND);, CONTINENTAL AIRLINES INC., SHERATON INTERNATIONAL INC., AGUAYTIA ENERGY, LLC (USA); MARRIOTT HOTELS INTERNATIONAL, B.V., E.I. FREIGHT HOLDING B.V. (NETHERLANDS); BECHTEL ENTERPRISES INTERNATIONAL LIMITED (UNITED KINGDOM); BERNDT FRIEDRICH BRAEDT KRIZA (GERMANY);DHL WORLDWIDE (NETHERLANDS)
Mining, Oil and Energy	AGUAYTIA ENERGY LLC (EEUU); THE SHELL PETROLEUM COMPANY LIMITED (PAISES BAJOS); CAMBIOR INTERNATIONAL (REINO UNIDO); CHILECTRA (CHILE); AMERICAN INTERNATIONAL PETROLEUM CORPORATION PERUVIAN BRANCH; DUKE ENERGY (EEUU); HUNT PIPELINE COMPANY (EEUU); BITOSI USA CORPORATION; ENDESA INTERNACIONAL (ESPAÑA); ENERGY DEVELOPMENT CORPORATION INC. (EE.UU.), HALLWOOD (EE.UU); EXPLORATION COMPANY PERU INC. (EE.UU); BRECKENRIDGE A.V.V. (PAISES BAJOS); BRETZIN MINES LIMITED (CANADA); MOBIL OIL

CORPORATION (EEUU); PLUSPETROL (ARGENTINA);
 REPSOL S.A. (ESPAÑA); SUEZ-TRACTEBEL (BELGICA);
 BTRIBANK INTERNATIONAL (CAYMAN); PSEG (EE.UUU);
 SEMPRA (EE.UU.); TECHINT (ARGENTINA); SK (COREA);
 SONATRACH (ARGELIA) ;

12. FREQUENTLY ASKED QUESTIONS

¿Which are the guarantees that the legal framework offer to an investor, either foreign or national?

¿Which are the specific guarantees for a foreign investor?

¿Are there any Stability Agreements for investments?

¿What are the advantages of a Stability Agreement?

¿Are there limits for foreign investment in Peru?

¿Are there limits for the remittance of profits or to repatriate the invested capital?

¿May Stability Agreements be relinquished?

¿Is there a term in which the committed investment under the Stability Agreements should be performed?

¿Is the hiring of foreign employees restricted?

¿Does a merger control regime exist?

¿Is the Intellectual Property protected?

¿Has Peru signed Bilateral Investment Agreements?

¿Has Peru signed any Agreements to avoid Double Taxation?

1.- ¿Which are the guarantees that the legal framework offer to an investor, either foreign or national?

- The right that contractual terms may not be modified by a law of the Congress or other regulations.
- Free access to all productive sectors.
- Non discrimination rights, that is equal treatment by the State for foreign and local investors and for private and state-owned companies.

- The right to receive the total amount of dividends and profits that the investor is entitled to.
- The right to use the most favorable exchange rate available in the market.
- The right to execute Stability Agreements with the State.

2.- ¿Which are the specific guarantees for a foreign investor?

- Remittance of profits and capitals, using the most favorable exchange rate available in the market.
- Free access to foreign currency.

3.- ¿Are there any Stability Agreements for investments?

Yes. The investors and the local companies receiving the investment may execute stability agreements with the State to stabilize, among others, the income tax regime.

Foreign investors may stabilize also the right to have a free access to foreign currency and the right to remit profits, dividends and capitals.

4.- ¿What are the advantages of a Stability Agreement?

It is a "Contract-Law" and, thus, may not be unilaterally modified by the State, even if new rules regarding foreign investments are enacted.

5.- ¿Are there limits for foreign investment in Peru?

The only limitation is that the foreign investor will require a governmental authorization to own or possess assets within 50 kilometers of the Peruvian border.

6.- ¿Are there limits for the remittance of profits or to repatriate the invested capital?

No. The foreign investor may remit profits or capitals at any time.

7.- ¿May Stability Agreements be relinquished?

Yes. In this case the investor will become subject to the common legislation.

8.- ¿Is there a term in which the committed investment under the Stability Agreements should be performed?

Yes. The general rule is within 2 years from the execution of the agreement.

Regarding state concessions for the development of infrastructure or public service projects, the investment terms and requirements of the concession, and not the general 2 years term, will be applied.

9.- ¿Is the hiring of foreign employees restricted?

Foreign employees are subject to the same legal regime as Peruvian employees. Foreign employees may not exceed 20% of the total workforce and their salaries may not exceed 30% of the total payroll. Foreign employees require the appropriate visa issued by the immigration authority to work in Peru.

10.- ¿Does a merger control regime exist?

No merger control regime exists, except in the electricity sector, where a proceeding to obtain a previous authorization shall be followed for every transaction, under INDECOPI's Free Competition Commission. Therefore, mergers, acquisitions and other concentration operations that do not involve electric generation, transmission or distribution companies will not require an authorization from the antitrust authority.

11.- ¿Is the Intellectual Property protected?

Patents, trademarks, copyrights and other intellectual property elements are protected in Peru through various treaties and international conventions, as well as through local legislation. Intellectual property rights are registered in Peru before the National Institute for the Defense of the Competition and Industrial Property - INDECOPI.

12.- ¿Has Peru signed Bilateral Investment Agreements?

The following countries have signed Bilateral Investment Agreements with Peru that are currently in force:

- | | | |
|--------------|-------------------|--------------------|
| 1. Germany | 11. Ecuador | 21. Paraguay |
| 2. Argentina | 12. Spain | 22. Portugal |
| 3. Australia | 13. Finland | 23. Check Republic |
| 4. Bolivia | 14. France | 24. Romania |
| 5. Chile | 15. Great Britain | 25. El Salvador |
| 6. China | 16. Netherlands | 26. Singapur |
| 7. Colombia | 17. North Ireland | 27. Sweden |
| 8. Korea | 18. Italy | 28. Switzerland |
| 9. Cuba | 19. Malaysia | 29. Thailand |
| 10. Denmark | 20. Norway | 30. Venezuela |

Furthermore, Peru has executed the following agreements with the U.S.:

- a) Additional Contract to the Convertibility Agreement executed between the U.S. and Peru through the exchange of notes dated March 14 and 16, 1955.
- b) Agreement executed between the U.S. and Peru with respect to the Trade and Investment Council dated May 16, 1991.
- c) Financial Agreement with regard to investment incentives (OPIC), dated December 16, 1992.
- d) Agreement related to the U.S. Export and Import Bank, supplement to the Financial Agreement with regard to investment incentives (OPIC), dated May 20, 1994.

Peru jointly with Ecuador and Colombia are negotiating a Free trade treaty with the United States of America. The negotiations are supposed to be finished by February 2005.

13.- ¿Has Peru signed any Agreements to avoid Double Taxation?

Agreements to avoid Double Taxation have been executed with Sweden, Chile, Canada and the country members of the Andean Community.