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# **DOING BUSINESS PERU**



## HANDBOOK FOR INVESTORS<sup>1</sup>

### (Doing Business Peru 2023)

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<b>INTRODUCTION</b>	4
<b>1. ¿WHAT PROTECTION MECHANISMS DOES THE PERUVIAN STATE PROVIDE FOR FOREIGN INVESTMENT?</b>	5
1.1 GENERAL OVERVIEW	5
1.2 FOREIGN INVESTMENT GUARANTEE REGIME	8
1.3 INVESTMENT PROMOTION AND PROTECTION AGREEMENTS	9
<b>2. WHAT ARE THE MAIN INVESTMENT VEHICLES?</b>	11
2.1 CORPORATIONS	11
2.2 BRANCHES	12
2.3 BASIC INFORMATION REQUIRED TO ORGANIZE A CORPORATION	13
2.4 REQUIREMENTS TO INCORPORATE A BRANCH	14
2.5 REMOTO SESSIONS	14
<b>3. HOW CAN I PROTECT MY TRADEMARKS, PATENTS, DESIGNS, UTILITY MODELS AND COPYRIGHTS?</b>	15
3.1 TRADEMARKS AND TRADE NAMES	15
3.2 PATENTS, DESIGNS AND UTILITY MODELS	16
3.3 COPYRIGHTS	16
3.4 REGISTRATION OF TRADEMARKS, COPYRIGHTS AND RELATED RIGHTS WITH PERU'S CUSTOMS AUTHORITY	17
3.5 DOMAIN NAMES	18
<b>4. WHAT ARE MY TAX OBLIGATIONS?</b>	18
4.1 INCOME TAX	18
4.2 VALUE ADDED TAX (IGV)	19
4.3 TEMPORARY TAX ON NET ASSETS (ITAN)	19
4.4 TAX ON FINANCIAL TRANSACTIONS (ITF)	20

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<sup>1</sup> Update as of January 2023



4.5 TAXES LEVIED ON THE REMUNERATION AND COMPENSATION OF EMPLOYEES.....	20
<b>5. WHAT IS PERU’S LABOR REGIME? .....</b>	<b>20</b>
5.1 EMPLOYEE HIRING.....	20
5.2 LABOR RIGHTS AND BENEFITS.....	22
5.3 CONTRIBUTIONS AND TAXES LEVIED ON THE REMUNERATION.....	25
<b>6. HOW IS FOREIGN TRADE REGULATED IN PERU? .....</b>	<b>26</b>
6.1 GENERAL OVERVIEW .....	26
6.2 OPENING UP TO FOREIGN TRADE – CURRENT POLICY .....	27
6.3 FOREIGN TRADE OPERATORS, PARTICIPATING OPERATORS, AND RELATED THIRD PARTIES .....	28
6.4 CUSTOMS REGIME GOVERNING IMPORTS FOR CONSUMPTION .....	28
6.5 IMPORT TAXES AND CUSTOMS-RELATED TAX OBLIGATIONS .....	30
6.6 CUSTOMS REGIME GOVERNING THE DEFINITIVE EXPORT OF GOODS FROM PERU .....	31
6.7 ONE-STOP SHOP FOR FOREIGN TRADE (VUCE).....	33
6.8 AUTHORIZED ECONOMIC OPERATOR (AEO).....	34



## INTRODUCTION

Muñiz, Olaya, Meléndez, Castro, Ono & Herrera Abogados was founded on August 15, 1981 and is currently one of the most important and prestigious law firms in Peru. It has offices in Peru's largest cities, like Lima, Trujillo, Chiclayo, Arequipa, Ilo, Tacna, Ica, Chincha, Piura, Puno, Juliaca, Cusco and Chimbote.

This handbook provides practical advice and useful information to potential investors interested in investing in Peru. It gives potential investors a quick overview of the legal framework in force in Peru and the main instruments and agreements signed by the government of Peru to protect and safeguard foreign investment.

This handbook is not intended to thoroughly analyze or present a comprehensive review of Peru's legislation, as it would exceed the scope of this guide. It is rather aimed at providing a first approach to the most relevant aspects of the legal framework that every potential foreign investor should take into account if it decides to invest in Peru.

It is worth bearing in mind the fact that this handbook is intended for informational purposes only and cannot be used as a guide to answer inquiries or resolve cases without getting specific professional legal advice in each case. If you have any doubt and/or comment, please contact any of the lawyers whose name appears at the end of this document.





## 1. ¿WHAT PROTECTION MECHANISMS DOES THE PERUVIAN STATE PROVIDE FOR FOREIGN INVESTMENT?

### 1.1 GENERAL OVERVIEW

#### Legal framework

Following are the general legal rules applicable to private investment:

LEGAL RULE	DESCRIPTION
a) Political Constitution of 1993	Art. 63- National and foreign investment.
b) Legislative Decree No. 662	This decree grants legal stability to foreign investors through the acknowledgment of certain guarantees.
c) Legislative Decree No. 757	Master law to encourage the growth of private investment.
d) Supreme Decree No. 162-92-EF	Master law to encourage the growth of private investment.
e) Law No. 27342	Law regulating legal stability agreements signed under Legislative Decrees Nos. 662 and 757.
f) Legislative Decree No. 1516	Legislative Decree that standardizes the cost for Access to stability provided in the legal stability agreements subject to Legislative Decrees No. 662 and 757.

#### LEGAL STABILITY REGIME

By Legislative Decree No. 662 (master law on foreign investment), foreign investors were granted legal stability through the acknowledgment of certain guarantees. Legislative Decree No. 757 (master law on private investment) was also enacted to regulate the growth of private investment, thereby consolidating the treatment given to investment in Peru. Both investment guarantee regimes constitute Peru's investment promotion and protection framework.

In 1992, Supreme Decree No. 162-92-EF approved the Regulations on the Guarantee Regimes available to Private Investors (hereinafter the Regulations). In this report, we will specifically refer to Legislative Decree No. 662 (hereinafter the Law) and to Supreme Decree No. 162-92-EF, the main aspects of which are described below:

#### Scope

All investors, including the companies where they invest, are protected by the investment guarantees contemplated in the Law and the Regulations, which basically refer to the right not to be discriminated against on grounds of nationality, economic sector or activity, geographical location of the company, prices, rates, non-customs tariffs, type of company, whether the investment is made by an individual or a legal entity, etc.

Moreover, the Law and the Regulations also contemplate the right not to be discriminated against on other grounds like the State ownership of the capital stock of a company, the right to private property, freedom of enterprise, freedom of domestic and foreign trade, the right to freely agree on the distribution of all of the company's profits or dividends, and the right to use the most favorable exchange rate available on the exchange market, in keeping with the provisions set forth in Article 9 of the Foreign Investment Promotion Law.

In addition, it should be pointed out that when a foreign investor invests foreign resources in the country, the foreign investor will be entitled to send abroad its profits and capital, using for such purpose the most favorable exchange rate available on the exchange market.

#### REQUIREMENTS TO GAIN ACCESS TO THE LEGAL STABILITY REGIME

The legal rules we are referring to also regulate the legal stability regime. Both the investor and the recipient company can resort to this regime by



entering into a legal stability agreement with the State.<sup>2</sup>

## INVESTORS

A foreign investor can enter into a legal stability agreement to the extent the following requirements are fulfilled:<sup>3</sup>

### a) When money is contributed to a Peruvian company:

1. The investment must be channeled through the national financial system, which means that the money must necessarily be sent via an international wire transfer.
2. The investment cannot be less than US\$ 10,000,000.00 (Ten million and 00/100 US Dollars) if it is made in the mining and hydrocarbon sectors, nor can it be less than US\$ 5,000,000.00 (Five million and 00/100 US Dollars) if it is made in the remaining sectors. The contribution must necessarily be made within a term of 2 years counted as from the date of signing of the stability agreement.
3. The capitalization must necessarily be made after the legal stability agreement has been signed. If the capitalization has already been made, then it cannot be taken into account for purposes of the fulfillment of the obligations resulting from the signing of the legal stability agreement. However, in such event, the investment can be registered with Proinversión.

### b) When risk investments are made in third-party companies

If the investment exceeds US\$ 10,000,000.00 (Ten million and 00/100 US dollars) and is made in the mining and hydrocarbon sectors, or exceeds US\$ 5,000,000.00 (Five million and 00/100 US dollars) and is made in the

remaining sectors, then it must be channeled through the national financial system. Moreover, the investment must be made within a maximum term of 2 years, counted as from the date of signing of the stability agreement.

### c) Purchase of shares in companies directly or indirectly owned by the State

In this case, the same requirements mentioned in paragraphs a and b above must be fulfilled, that is, the investment cannot be less than US\$ 10,000,000.00 (Ten million and 00/100 US dollars) if it is made in the mining and hydrocarbon sectors, nor can it be less than US\$ 5,000,000.00 (Five million and 00/100 US dollars) if it is made in the remaining sectors, and must be made within a maximum term of 2 years counted as from the signing of the agreement. In addition, it must be channeled through the national financial system.

In both cases, the transfer must involve more than 50% of the shares of the relevant company.

To comply with the requirements which are to be fulfilled in order to resort to the legal stability regime, through Board Resolution N° 002-97-EF/35 the National Committee for Foreign Investment and Technology (Conite for its acronym in Spanish) resolved that Proinversión (Peru's Private Investment Promotion Agency) can take into account both local currency contributions originating from resources entitled to be sent abroad, as referred to in item b) of Article 1 of Legislative Decree N° 662, as well as the capitalization of private obligations contracted abroad, as referred to in item c) of Article 1 of Legislative Decree N° 662<sup>4</sup>, when the respective disbursements have been channeled through

<sup>2</sup> This procedure is followed with PROINVERSION (formerly, the National Commission on Foreign Investment and Technologies (CONITE)).

<sup>3</sup> Article 2 of Law N° 27342, Law which regulated Legal Stability Agreements under Legislative Decrees Nos. 662 and 757.

<sup>4</sup> Article 1 of Legislative Decree N° 662, Foreign Investment Promotion Law: "The State promotes and guarantees foreign investment made or to be made in the country in all economic sectors, regardless of the business or contractual method allowed by the national legislation.

To this end, any investment coming from abroad and made in income-generating economic activities shall be deemed to be foreign investment, provided it is made in any of the following ways:

Contributions of property by individuals or legal entities, channeled through the National Financial System, to the capital of a new or existing company in any of the ways indicated in the Business Corporation Law, in a freely convertible currency or in physical or tangible goods, such as industrial plants, new and reconditioned machinery, new and reconditioned equipment, spare parts, parts and pieces, raw materials and intermediate products; Investments in local currency originating from resources entitled to be sent abroad; Conversion of private foreign obligations into shares;

Reinvestments made in keeping with the legal rules in force; Investments in goods that are physically located in the territory of Peru; Intangible technological contributions, such as trademarks, industrial



the national financial system, provided the applicable tax obligations have been fulfilled.

## RECIPIENT COMPANIES

Companies receiving an investment, irrespective of whether it is made with local or foreign funds, can enter into a legal stability agreement, to the extent the following requirements are fulfilled:

- (a) When they receive or are incorporated with new capital contributions made by investors or when more than 50% of the shares of companies fulfilling the entrepreneurial role of the State are transferred and at least one investor acquires said shares.

Legal stability includes tax stability for companies; according to this, the applicable Income Tax will be stabilized as per the current legislation at the time of the execution of the corresponding agreement plus 02 (two) percentage points.<sup>5</sup>

- (b) When newly incorporated companies or companies already established receive new investments worth over 50% of their capital plus reserves, provided said new investments are aimed at increasing the company's productive capacity<sup>6</sup> or at improving its technological capacity, and they have at least one investor that makes minimum contributions.

Legislative Decree N° 882 provides that the foreign investment stability guarantees are also applicable to investment in education.

Through Board Resolution N° 002-97-EF/35, Conite resolved that any increase in the corporate capital account resulting from the capitalization of the revaluation

surplus or from inflation adjustments is included within the stability guarantee, provided Proinversión is given notice of said capitalization within a term of 30 days counted as from the date it was made.

Moreover, Supreme Decree N° 048-98-EF provides that the stability guarantees are also applicable to increases in the amount of the investment commitments assumed by the investor in the legal stability agreement, provided said increases are made within a term of two years counted as from the signing of the original agreement and after the corresponding application has been filed with the competent national entity, regardless of whether the relevant changes to the legal stability agreement are made before or after the investment is increased.

## GUARANTEES AFFORDED BY THE LEGAL STABILITY AGREEMENT

When a legal stability agreement is signed, the investor or the company that receives the investment will have the following rights for a term of 10 years:

1. Tax regime stability, referred to the income tax, applicable as per the current legislation at the time of the execution of the corresponding agreement; the applicable rate is that of the date and for investee companies is the current rate of that date plus 02 (two) percentage points. In fact, it means that:
  - a) During the term of the legal stability agreement, the profits and/or dividends distributed to the investor will not be subject to a higher rate than the one established in the legal stability agreement. It should be pointed out that by virtue of this stability regime, if the Income Tax Law

models, technical assistance and technical know-how, whether patented or not, which can be presented in the form of physical goods, technical documents and instructions; Investments in securities, documents and financial instruments listed on stock exchanges or bank deposit certificates in local or foreign currency; Resources earmarked for joint venture agreements or similar agreements that grant foreign investors some sort of participation in the productive capacity of a company, without it entailing a capital contribution, which corresponds to contractual business transactions through which the foreign investor provides goods or services to the recipient company in exchange

for a participating interest in the physical production, global sales, or net profits of the recipient company; The investments contemplated in this item must be subject to the applicable tax laws; and Any other foreign investment which may contribute to the country's development;

<sup>5</sup> Article 1 of Legislative Decree 1516 "Legislative Decree that standardizes the cost for access to stability provided in the legal stability agreement subject to Legislative Decrees No. 662 and No. 757."

<sup>6</sup> The concept of productive capacity includes both goods and services provided by companies.



is modified during the term of the legal stability agreement, changing the taxable base or the aliquots to the detriment of the company which generates profits, or if new taxes are created and levied on the company's income or if, for any other reason having a similar effect, the profits or dividends to be distributed or made available to the investor decrease, as a percentage, with respect to the pre-tax profits or dividends (compared to the ones which were to be distributed or made available to the investor when the stabilized tax regime was agreed upon), then the income tax aliquot or aliquots applicable to the profits or dividends will be reduced in order for the profits or dividends to be finally made available or distributed to be equivalent to those covered by the legal stability agreement, to the largest extent possible, to be drawn against said tax, or to the profits or dividends.

- b) As long as the legal stability agreement remains in effect, investment recipient companies can rest assured that the income tax rate that they must pay will not be modified, for which reason they will be subject to the same terms, aliquots, deductions and scales used for calculating the taxable income as those contained in the legal stability agreement.<sup>7</sup>
2. Stability with respect to the free availability of foreign currency. Foreign investors will be entitled to receive and dispose of foreign currency without any restriction whatsoever and without the need to obtain any previous authorization from any authority.
3. Stability as to the right to freely send abroad profits, dividends, capital, and other revenues received. As we know, investments must be

valued and registered with Proinversión, in a freely convertible currency.

It should be pointed out that the difference between the amount of the investment transferred in a freely convertible currency and the value at which the investment was registered in the same currency will be considered to be a capital gain.

4. Stability with respect to the right to use the most favorable exchange rate available on the exchange market.
5. Stability as to the right not to be discriminated against. Foreign investors and the companies where they invest have the same rights and obligations as national investors and companies, the only exceptions being those contemplated in the Political Constitution of Peru. Neither the national legislation, nor any central government agency or company, or regional or local government can grant different treatments to investors or companies depending on whether the investment is made by national or foreign investors.
6. Stability with respect to the legal rules which regulate employee hiring regimes, regardless of the hiring options.
7. In the case of financial lease agreements, the applicable tax regime is fully stabilized by signing legal stability agreements.

## 1.2 FOREIGN INVESTMENT GUARANTEE REGIME

### LEGAL STABILITY AGREEMENTS

#### Concept

The legal stability agreement is a mechanism whereby the Peruvian State, represented by the competent entity in charge of regulating investment in the country, in this case Proinversión, guarantees investors and the

<sup>7</sup> Article 26, item f) of Supreme Decree N° 162-92-EF provides that Legal Stability Agreements: "can be waived by investors, companies and lessees, in which case they will be governed by the common legislation."





companies where they invest stability with respect to the tax regime in force on the date of signing of the agreement; stability as to the free availability of foreign currency and the rights contemplated in Articles 7 and 9 of Legislative Decree No. 662; and stability with respect to the right not to be discriminated against, as contemplated in Article 2 of Legislative Decree No. 662.

Companies already operating in Peru with foreign capital under Article 12 of Legislative Decree No. 662 can enjoy stability with respect to the employee hiring regime, regardless of the hiring option, and can also enjoy stability with respect to the special regimes exclusively designed for exports, such as temporary admission, free industrial economic zones or commercial and tourist areas, and others to be created in the future.

## ULTRA-ACTIVITY

Legal stability agreements grant, on an exceptional basis, an ultra-activity benefit with respect to the legal regime in force when the legal stability agreement was signed, as long as the legal stability agreement remains in effect, with respect to the aspects covered by said stability.

Ultra-activity implies that whoever is protected by legal stability agreements will continue being subject to the same laws that were in effect when the legal stability agreement was signed, which means that they will not be affected by new changes to the laws, including the repeal of legal rules (even in the case of more favorable or less favorable legal rules).

## CHARACTERISTICS OF LEGAL STABILITY AGREEMENTS

Following are the most important characteristics of legal stability agreements:

- Legal stability agreements are civil law contracts governed by the provisions set forth in the Civil Code.
- They have the force of law between the parties, for which reason they cannot be unilaterally

modified for any reason whatsoever, as long as they are in effect.

- They are entered into with the State, duly represented by the competent national entity (Proinversión). They can be signed by investors, investment recipient companies or lessees (in the case of financial lease agreements). If two or more investors invest in the same company, they can enter into legal stability agreements with the State, whether individually or jointly.
- They must be signed before the investment is made and registered with the competent national entity.
- The term of legal stability agreements is ten years, counted as from their date of signing.
- They can be waived by investors, companies or lessees.
- It is possible to assign the contractual position of a party to the agreement, provided authorization is previously obtained from the competent national entity.
- It is possible to modify a legal stability agreement by mutual agreement between the parties, provided the modification does not deal with the term of the agreement, nor does it reduce the amount of the investment below the minimum limits, depending on the investment option chosen.

## 1.3 INVESTMENT PROMOTION AND PROTECTION AGREEMENTS

### MAIN CLAUSES OF BILATERAL INVESTMENT PROMOTION AND PROTECTION TREATIES (BITs)

#### Fair and equitable treatment

A minimum standard of protection is offered to investors. In fact, it means that the parties are obliged not to behave in a manner that is contrary to the object and purpose of the agreement, which is materialized through the adoption of measures that do not give rise to discriminating treatments.

#### Equal treatment

States undertake, once the investment enters their respective territory, to grant foreign investors the



same treatment that they grant to national or local investors.

## Most favored nation

The investment made by any country in Peru cannot be given a less advantageous treatment than the treatment given in Peru to the investment made by countries with which it has entered an investment agreement.

## Compensation for damages and losses

According to international law, it is not mandatory to grant compensation for damages and losses caused by wars or civil unrest; however, most investment treaties contemplate granting compensation against these damages. Therefore, if the investment made by investors in the host State suffers any loss or damage due to wars, armed conflict, emergencies, civil unrest or other similar events, the investment recipient State will grant compensation against said losses or damages, regardless of whether or not they have been caused by government forces or other individuals.

## Free remittance of capital abroad

BIT member States must guarantee that investors will be able to transfer abroad, without undue delays, in any convertible currency, the following:

- a) Their capital and additional capital, including revenues reinvested, used in maintaining and increasing the investment.
- b) Net income, dividends, royalties, payments for technical assistance and technical services, interest, and other gains.
- c) Revenue derived from the sale, whether in whole or in part, or from the liquidation, whether in whole or in part, of the investment.
- d) Funds required to repay investment-related loans and related interest.
- e) Remunerations and allowances paid to nationals from the other contracting party for work performed and services rendered, in

relation to an investment made in the territory of the other contracting party, subject to the amount and in the manner contemplated in the national legislation and the regulations in force.

## Expropriation and indemnity

The right of ownership is an inviolable right, according to Article 70 of the Constitution of Peru<sup>8</sup>. Moreover, investment treaties guarantee that property will only be expropriated, or that similar measures will only be taken, in exceptional circumstances, that is, in cases of public necessity or national interest, provided a fair price is paid immediately.

The Constitution also guarantees that there will be no discrimination and that expropriation or similar measures will only be taken in keeping with the established legal procedures and rules. In this way, it guarantees that investors will not be affected by the issuance of any legal rule in the investment recipient country which may somehow limit their investment, thereby preventing investors from obtaining the expected benefits.

## Dispute resolution

The availability of a dispute resolution mechanism, among other guarantees, is decisive. Accordingly, investment treaties provide that if a dispute arises, the parties can either resort to the courts of a member state or otherwise refer the dispute to an independent arbitration tribunal like the International Centre for Settlement of Investment Disputes (Icsid), or otherwise carry out an ad-hoc arbitration proceeding in keeping with the arbitration regulations of the United Nations Commission on International Trade Law (Uncitral). As a result of these mechanisms, investors can rest assured that an independent tribunal will resolve any dispute which may arise.

## FREE TRADE AGREEMENTS (FTAs) – INVESTMENT CHAPTER

<sup>8</sup> Article 70.-Inviolability of the ownership right

The right of ownership is inviolable. It is exercised in keeping with the common good and is subject to the limits set forth in the law. Nobody can be deprived from its property, only by reasons of national security or public necessity, declared by law, and subject to the prior payment of a fair

indemnity in cash which should include compensation for the damage eventually caused. It is possible to file an action with the Judiciary opposing the value of the property expropriated by the State, determined by the State.



A Free Trade Agreement (FTA) is a regional trade agreement aimed at increasing trade (between signatory countries) by reducing barriers to trade in goods and services. However, FTAs not only deal with trade. In fact, FTAs basically deal with trade in goods and services, but also with investments, competition, and labor and environmental matters.

An FTA brings several benefits to the signatory countries, like availability of broader markets, development of scale economies, increase in foreign investment, country risk mitigation, etc.

FTAs also have another implicit benefit: they contribute to increase competition between local and foreign producers. Accordingly, depending on the size of the consumer market, both national and foreign companies will invest in the country, in pursuit of this competition, which entails an implicit benefit, that is, a greater inflow of investment to the country. By being a regional trade agreement, the FTA also provides a stable and predictable framework that encourages trade and foreign investment.

## TRADE AGREEMENTS WHERE PERU IS A MEMBER STATE

### International Trade Agreements

World Trade Organization (WTO), which currently has more than 150 members (Peru is a WTO member state since January 1, 1995).

### Regional Trade Agreements

- **APEC<sup>9</sup>** (Asia-Pacific Economic Cooperation), composed of 21 member states.
- **ALADI<sup>10</sup>** (Latin American Integration Association), created in August 1980 for the purpose of having member states enjoy tariff preferences over third countries (AR. PAR N° 4, 1984). It currently has 12 Member States.
- **Andean Community of Nations** (ACN or CAN for its acronym in Spanish). By virtue of Decision 414 (1997), trade between Peru and the

remaining member states will be gradually freed. Its member states currently are Bolivia, Colombia, Ecuador, and Peru.

## 2. WHAT ARE THE MAIN INVESTMENT VEHICLES?

### 2.1 CORPORATIONS

Corporations are the most widely used vehicle to carry out profitable activities in Peru. Under Peruvian law, there are three types of corporations: (i) Corporation (*Sociedad Anónima*), (ii) Closely Held Corporation (*Sociedad Anónima Cerrada*) and (iii) Open Corporation (*Sociedad Anónima Abierta*).

It is worth stressing the most outstanding features of each type of corporation:

#### CORPORATION (S.A.)

Also known by its Spanish acronym S.A., it includes at least a shareholders' meeting, a board of directors and management. The minimum number of shareholders is two. Although no right of first refusal exists for the transfer of shares, it can be freely agreed upon by the shareholders.

#### CLOSELY HELD CORPORATION (S.A.C.)

Also known by its Spanish acronym S.A.C., unlike the remaining types of corporations, in this case the shareholders can decide not to be managed by a board of directors. However, it must have a shareholders' meeting and management. There must be a minimum of two (2) and a maximum of twenty (20) shareholders. The transfer of shares is subject to the right of first refusal to be exercised by the remaining shareholders before the shares are transferred to a third party, whether or not a shareholder. The bylaws of a S.A.C. can limit the transfer of shares to the prior approval thereof by the shareholders' meeting, and can even establish that if any of the shareholders dies, the remaining shareholders will have the right of first refusal to

<sup>9</sup> Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua Nueva Guinea, Peru (since November 1998), The Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States, and Vietnam.

<sup>10</sup> Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru (since it was created), Uruguay, and Venezuela.



purchase the shares, enjoying priority over the lawful heirs of the decedent.

## OPEN CORPORATION (S.A.A.)

Also known by its Spanish acronym S.A.A., it includes a board of directors, a shareholders' meeting, and management. This type of corporation is contemplated for corporations which: (i) have made a primary public offering of shares or obligations which can be converted into shares; (ii) have at least 750 shareholders, or (iii) when more than 35% of the capital stock is held by 175 or more shareholders, without considering shareholders whose shares, individually considered, do not reach 2/1000 of the capital stock or exceed 5% of the capital stock. However, there can be a smaller number of shareholders (no less than 2) when the corporation is incorporated in that way or when 100% of the shareholders holding voting shares agree to incorporate this type of corporation. In such event, it is not possible for the bylaws to contemplate any right of first refusal and all the shares will have to be registered on the Stock Market Public Registry.

## 2.2 BRANCHES

### Definition

The second paragraph of Article 21 of the Business Corporation Law No. 26887 (hereinafter "the law") provides that companies incorporated and domiciled in a foreign country, which usually perform activities in Peru, can establish branches or offices in our country and thus be domiciled in Peru, for the acts they perform in Peru.

Article 396 of the law defines branch as: "Every secondary establishment through which the company performs its activities, at a place other than its domicile, provided said activities are contemplated in its corporate purpose".

The legal capacity of the branch is not different from that of its home office, for which reason the latter must hold itself accountable for the obligations assumed by the branch and every agreement to the contrary is null and void.

Branches have permanent legal representatives and enjoy autonomy in performing the activities assigned to them by their home office, according to the terms of the power of attorney granted to their representatives.

Finally, the cancellation of the registration of the branch at the Public Registry Office does not affect the liability of the home office with respect to the obligations assumed by the branch, even for the redress of damages resulting from the lack of appointment of a legal representative.

### REPRESENTATIVE OF THE BRANCH

Branches must necessarily have a permanent legal representative (hereinafter the "representative"). His/her designation must be contemplated in the public deed of incorporation of the branch and his/her powers will be at least those required to hold the home office accountable for the operations carried out by the branch and must additionally be granted the general powers required to represent the branch in the tax field in order to be able to proceed in the manner contemplated in the law.

The remaining powers granted to the representative can be listed in the power of attorney regime and to exercise said powers it will only be necessary to provide a certified copy of his/her designation registered at the Public Registry Office, if the home office is a Peruvian company.

If the home office is a foreign company, then the following documents must be registered in the Public Registry Office: (i) power of attorney, and (ii) document proving the existence of the home office abroad.

The provisions set forth in the General Corporation Law in relation to the general manager of a company will also be applicable to the representative. If the representative stops representing the company, then the company must immediately designate a new legal representative; if within a term of ninety days counted as from the resignation of the former





representative, the company has still not appointed a new representative, then the registration of the branch will be cancelled.

## 2.3 BASIC INFORMATION REQUIRED TO ORGANIZE A CORPORATION

- a) Name and ID data (passport number in the case of individuals or registration data in the case of companies) of the shareholders which will incorporate the corporation.

Non-domiciled companies must appoint a representative authorized to incorporate the corporation in Peru. This representative must be duly appointed to act in such capacity, for which purpose a power of attorney must be granted abroad. The power of attorney must be legalized by the Peruvian Consulate and certificates of existence and good standing must also be provided. These certificates must then be protocolized and registered in the Public Registry Office of Peru. It should be pointed out that since October 2010, Peru is a full member of the convention which eliminated the requirement of having foreign public documents legalized ("Apostille system"), adopted on October 5, 1961 in The Hague, Kingdom of the Netherlands.

- b) Exact name of the corporation to be incorporated in order to legally reserve its name at the Public Registry Office.
- c) Amount of the capital stock of the corporation. There is no minimum amount, except for special cases in some specific sectors. The capital must be expressed in soles and in whole numbers (decimals cannot be used), except for some special cases in some specific sectors.
- d) Designation of the members of the board, the general manager and other managers – if applicable, indicating the powers and duties they will have. The general manager or the other managers of the corporation exercise all the powers and duties required to represent the corporation, barring the limitations expressly set forth on the electronic card of the corporation. It is necessary to provide the full

ID data of these persons (ID document, nationality, and address). If a foreign national is designated to serve on the board or to fill the position of General Manager or manager, then the necessary migratory status must be obtained. If members of the board are designated to serve on the board, then the duly legalized letter of acceptance must be attached.

- e) Purpose of the corporation which, except for some special cases in some specific sectors, can be broad and general, thereby allowing the corporation to carry out different activities.

## INCORPORATION PROCEDURE

- a) Search and reservation of the name of the corporation to be incorporated, in order to make sure that said name is available at the Public Registry Office.
- b) Drafting of the articles of incorporation (once the bylaws are ready).
- c) Filing of the articles of incorporation with a notary's office in Lima.
- d) The amount of the capital stock of the corporation must be deposited in a Peruvian financial entity designated for such purpose.
- e) Conversion of the articles of incorporation into a notarially recorded instrument (public deed) and signing of the public deed. If the corporation has been incorporated by non-domiciled shareholders, then before signing the public deed it will be necessary to take the steps required to have a power of attorney granted at the Peruvian Consulate, as aforesaid.
- f) Filing of the public deed with the Public Registry Office in and for Lima.
- g) Filing of an application to get the corporation's taxpayer's ID number (RUC).
- h) Legalization of the register of shareholders and directors (if any) and ledger book.
- i) Once the shareholders decide where the office of the corporation will be located, an application will be filed with the competent city council to obtain a Municipal Operating



License. Special licenses may be required in special cases in some specific sectors.

## Terms

The term required to organize a corporation in Peru is usually short. In fact, the whole process should not exceed fifteen days, except for the process required to obtain a municipal operating license and other special authorizations required in some specific sectors.

## 2.4 REQUIREMENTS TO INCORPORATE A BRANCH

To incorporate a branch of a foreign home office in Peru, the home office must sign a public deed of incorporation, which must include at least the following information:

- i. Certificate of good standing of the home office in its home country, supported by documentary evidence that neither its articles of incorporation nor its laws prevent it from incorporating branches abroad. If this certificate does not specify that the company is not prohibited from establishing branches, then this certificate should be issued by the authorized representative of the home office, indicating that no prohibition exists to incorporate branches.
- ii. Copy of the articles of incorporation and bylaws or an equivalent document issued in the home country of the home office.
- iii. Certificate issued by the competent foreign authority or officer (certificate of incumbency), indicating that the grantor(s) of the power of attorney, as referred to in item (iv) below, is (are) duly authorized to represent the company and grant powers on its behalf under the terms set forth in the public deed of incorporation of the branch.
- iv. The resolution approved by the competent corporate body of the home office, agreeing to incorporate a branch in Peru, must include the following information:
  - Capital assigned to the branch to carry out its activities in Peru.

- Affidavit stating that the activities to be carried out by the branch are contemplated in the corporate purpose of the home office.
- Domicile of the branch.
- Designation of at least one permanent legal representative in the country, powers granted to said representative, and a statement in the sense that he/she will hold himself/herself accountable under Peruvian law for the obligations assumed by the branch.

It is worth bearing in mind the fact that all documents sent from any country to Peru must be duly authenticated by the Peruvian consul in the country where the home office grants the power of attorney, which must be drawn up in Spanish and must then be authenticated by the Ministry of Foreign Affairs of Peru.

## 2.5 REMOTO SESSIONS

Pursuant to Law No. 31194, amending Section 21-A of General Corporation Law, a company may call virtual meetings by electronic media provided that there is receipt acknowledgement. It also provides that the minutes of virtual sessions shall bear a digital or handwritten signature of those required to sign thereof by law or bylaws. Such minutes shall be inserted in the corresponding minutes book. Additionally, minutes can be kept in electronic media or other like media provided that storage can be guaranteed, as well as the authenticity and legitimacy of the agreements adopted.

As provided by Law, enjoyment of the right to vote, in virtual or in-person sessions, can be evidenced through digital signature, electronic media or other like media, or through documents with legalized signature.

For the registration of the resolutions adopted in general or special shareholders meetings, the respective minutes shall be presented to the National Superintendency of Public Registries, describing the institution holding the meeting, the



date, the hour of start and conclusion, full names and Peruvian National Identity Document (DNI) numbers of those who acted as chair and secretary, the number of participants, the matters discussed in the session, the resolutions adopted and the meaning of the respective vows, as well as the means used to carry them out.

## 3. HOW CAN I PROTECT MY TRADEMARKS, PATENTS, DESIGNS, UTILITY MODELS AND COPYRIGHTS?

### 3.1 TRADEMARKS AND TRADE NAMES

The application, registration, protection, and effective force of trademarks in Peru are regulated by Decision 486, Common Industrial Property Regime, hereinafter the Decision, and by the provisions set forth in Legislative Decree No. 1075, which approved some provisions that supplement Decision 486, hereinafter the Decree.

The competent authority is the National Institute for the Defense of Competition and Intellectual Property - INDECOPI.

In order to protect intellectual creations, particularly trademarks, INDECOPI has three internal bodies: The Directorate of Distinctive Signs (DSD for its acronym in Spanish), the Commission on Distinctive Signs (CSD for its acronym in Spanish) and the Intellectual Property Courtroom of the Tribunal for the Defense of Competition and Protection of Intellectual Property, hereinafter the Intellectual Property Courtroom.

The DSD is the entity in charge of matters related to the registration of trademarks, trade names, slogans, and designations of origin in Peru, including changes to and renewals of trademarks, trade names, slogans and designations of origin. The DSD is the entity in charge of resolving non-contentious proceedings, while the CSD will be in charge of resolving contentious proceedings.

The ownership of trademarks (except for trade names) is obtained once the relevant trademarks are registered with INDECOPI's DSD.

In our country, the Trademark Authority applies the Nice Classification for the registration of marks. According to the Nice Classification, trademarks are divided into product and service marks. Products are protected by Classes 01 through 34, while services are protected by Classes 35 through 45. To apply for the registration of a trademark or trade name, it is important to specify the class where the product or service to be identified by the relevant mark will be included.

In Peru, it is possible to register a trade name. However, its registration is not constitutive but merely declarative, as the rights to a trade name are acquired and preserved by using the trade name on the market.

In Peru, trademarks are protected for a term of 10 years, renewable for like periods indefinitely.

The trademark registration procedure takes approximately from 3 to 5 months if no oppositions are filed. When an opposition is filed, the registration procedure lasts approximately 9 months at the CSD.

Unlike other countries, Peru does not require the filing of a statement of use from time to time. However, the CSD can cancel, at the request of any party, the registration of a trademark if it has not been used for a period of three consecutive years immediately preceding the start of the cancellation action. In this kind of proceedings, the burden of proof rests on the trademark owner, who must prove that the trademark is being used in respect of products registered in Peru or any Andean Community member country (Bolivia, Colombia or Ecuador).

If the applicant is a company, then in order to represent the company in a registration procedure, the company must grant a power of attorney signed by the legal representative of the company indicating the position he/she fills in the company. No legalization is required and the power of attorney can be sent by e-mail as the original is not required.



Trademark registration confers upon its holder the exclusive right to use the trademark, so the owner can bring an infringement action against any third party unduly using its trademark and infringing its rights. An infringement action can also be filed when there is an imminent danger that the rights of the trademark holder will be infringed.

Moreover, whoever files or intends to file an infringement action can request CSD to grant it injunction relief immediately in order to prevent the infringement, avoid its consequences, obtain or preserve evidence, or guarantee the efficacy of the action or a redress for damages. It is possible to request injunction relief before the action is filed, at the time the action is filed or after the action is filed.

In addition, the infringement of rights to distinctive signs is typified as a crime, in keeping with Title VII of the Criminal Code.

## 3.2 PATENTS, DESIGNS AND UTILITY MODELS

Upon the filing of a patent registration application in Peru, whether for an invention or utility model, the applicant must include a clear and full description of the invention, a list of claims and a summary. If necessary, examples and images that help understand in a better way the invention or utility model being claimed will be attached.

Concerning applications for the registration of industrial designs, the applicant must file a set of drawings or images of the product with the new design, including all views of the product: side, front, rear, upper, lower and isometric views, in order to give a complete idea of the design of the product.

The whole procedure required in order to have an invention patented lasts approximately from three to four years. In the case of utility models, this term can be reduced to 2 years and in the case of industrial designs, the procedure can be completed in around 8 months. However, if the matter in question is complex and oppositions are filed by

third parties, then the above periods could be extended.

The holder of a patent granted for an invention, utility model or industrial design can file an infringement action against whoever infringes its rights. An infringement action can also be filed when there is an imminent danger that the rights of the patent holder will be infringed.

In addition, the infringement of rights to invention patents, utility models or industrial designs is typified as a crime, as provided for in Title VII of the Criminal Code.

## 3.3 COPYRIGHTS

All intellectual, personal and original creations, such as literary and artistic works, computer software, drawings, photographs, musical and audiovisual works, among others, are protected in Peru. This protection applies to all works of the mind, regardless of their country of origin, gender, form of expression, merit or purpose. Moreover, copyright-related rights, such as the rights of artists, interpreters or performers, phonogram producers and broadcasting companies, inter alia, are also protected.

The registration of a copyrighted work is not constitutive of rights, it's merely declarative, and is effective for probatory purposes. Copyrights and copyright protection arise as from the very moment a work is created.

Registration applications are filed with INDECOPI's Copyrights Directorate, hereinafter DDA, which will examine whether or not the formal and originality requirements are fulfilled in order to authorize registration. The legal rules currently in force with regard to copyrights – Legislative Decree No. 822, Copyright Law, and Decision 351, Common Regime on Copyrights – contain the minimum protection requirements to be fulfilled.

The process involved in the registration of a copyrighted work takes approximately 15 business days at DDA. If DDA rejects the registration application, then an appeal can be filed in the last





administrative instance with the Intellectual Property Courtroom.

In our legislation, the author or creator is always an individual. The author is therefore the copyright holder, barring exceptions of presumed assignment contemplated in the law, or contractual assignment of property rights.

Copyrights involve both moral rights and intellectual property rights of an economic nature. The former includes the right of disclosure, the right of authorship, the right to integrity, the right to make modifications, and the right to withdraw from a publication. These rights are inalienable, perpetual, non-attachable, and non-waivable. The latter include the right to perform, authorize or prohibit the reproduction, public disclosure, distribution, translation and import of a work, and the right to obtain economic benefits from said acts.

Barring some exceptions, these rights last up to 70 years after the death of the author, in which case they are exercised by the heirs. Upon expiration of this term, the relevant works become public domain and can be freely used, without prejudice to the fulfillment of the moral rights which are perpetual.

If the acknowledged rights of a copyright holder are infringed, the copyright holder can bring an infringement action with CDA, and can even request the adoption of immediate measures to prevent the commission of the infringement, avoid its consequences, obtain or preserve evidence or guarantee the efficacy of the action or redress the damage caused. It is possible to request injunction relief before the action is filed, at the time the action is filed or after the action is filed.

In addition, the infringement of copyrights is typified as a crime, as provided for in Title VII of the Criminal Code.

## 3.4 REGISTRATION OF TRADEMARKS, COPYRIGHTS AND RELATED RIGHTS WITH PERU'S CUSTOMS AUTHORITY

Legislative Decree No. 1092 regulates the so-called "border measures", which allow protecting the holder of trademarks, copyrights and related rights from the export, import or transit of pirated or forged goods in the primary customs area, temporarily suspending the authorization for the entry or exit of said goods.

In order for this suspension to be authorized, the aforesaid Legislative Decree provides that the relevant trademark, copyright or related right must be registered with the customs authority. This registration is valid for a term of one year and must be renewed during the first 30 business days of each year.

Upon registration of the right, the customs authority, if it finds out or otherwise is informed that products identified with a trademark or copyright or related right registered with the customs authority have been imported or exported by a party other than the holder of the relevant rights, or are otherwise in transit, then it will send a warning to the holder of the rights or to its designated representative, informing it of the purportedly illegal import, export and transit of goods, so that it may exercise its rights, if applicable. The surveillance and warning system used by the customs authority is only activated after a trademark has been registered with the customs authority.

This legal rule is not only applicable to imports made to Peru, but also to goods earmarked for export regimes or goods which are only in transit in Peru. Once the customs authority suspends the authorization for the entry or exit of goods, the holder of the relevant right must file an infringement action with the trademark authority – INDECOPI.

Considering the advantages that the registration of trademarks and/or copyrights with the customs authority affords to our clients, we recommend to



have trademarks and/or copyrights registered with the customs authority, placing special emphasis on the most representative trademarks and/or copyrights of our clients' portfolios.

### 3.5 DOMAIN NAMES

The entity in charge of the registration of domain names in our country is Red Científica Peruana. There are two types of registration:

**Non-restricted:** In respect of which any third party can have a name registered with the ".pe", ".org.pe", ".net.pe", ".com.pe" o ".nom.pe" extensions.

**Restricted or government:** Those which can only be registered by whoever complies with the applicable requirements to be met in each case and include the ".edu.pe", ".gob.pe" o ".mil.pe" extensions. This type of registration allows limiting the domain name, making it impossible for any other person (whether an individual or a legal entity) to register the same domain with a different extension (a possibility existing in the former non-restricted case).

**Domain names can be registered for a term of one to five years. Moreover, the holder can be an individual or a legal entity, either Peruvian or foreign.**

## 4. WHAT ARE MY TAX OBLIGATIONS?

Nationwide, companies incorporated in Peru are subject to a simplified tax regime which mainly consists of four taxes: income tax, value added tax ("IGV" for its acronym in Spanish), temporary tax on net assets (ITAN for its acronym in Spanish), and tax on financial transactions (ITF for its acronym in Spanish). In some cases, the laws which regulate these taxes call for the obligation to comply with some formalities like, for instance, keeping accounting books or records or preserving some documents to substantiate the conditions under which certain activities were carried out.

### 4.1 INCOME TAX

The company must pay income tax on all its annual net revenues, regardless of where the source is located. The corporate income tax rate is 29.5%.

The company must make income tax prepayments on a monthly basis. These payments will be calculated by applying a coefficient which cannot be less than 1.5% to the monthly net revenues. Prepayments will be deducted from the income tax determined at the end of the fiscal year.

Expenses related to business activities can be deducted (with very few exceptions) in order to calculate the taxpayer's annual net income. Following are the depreciation percentages the deduction of which is permitted by law: buildings and constructions: 5%; land transport vehicles (except trains): up to 20%; machinery and equipment: up to 10%; data processing equipment: up to 25%; and other fixed assets: up to 10%. Intangible assets can be amortized in a single fiscal year or in up to ten years.

Losses shown in any fiscal year can be carried forward to future fiscal years, according to any of the following methods:

- a) Under method "A", losses can be carried forward within a period of four fiscal years counted as from the date they were incurred.
- b) Under method "B", losses can be carried forward indefinitely, although they can only be compensated against a maximum amount equivalent to 50% of the annual net income obtained during the next fiscal years.

This tax must be paid and the applicable tax return must be filed within a term of four months counted as from the end of the fiscal year, which begins on January 1st and ends on December 31st. The Tax Administration publishes every year the schedule of expiry dates.

If the company distributes dividends or other amounts which are considered "dividends" for tax purposes, then it must withhold income tax, the applicable rate being 5%, and pay the withheld



amount to the treasury within the term established for the payment of monthly taxes.

The deduction of any interest paid by the company on loans is subject to a limit. Said limit is currently equivalent to one-third of the net worth and the amount in excess of said limit is non-deductible. As from 2021, the limit will be equivalent to 30% of the EBITDA<sup>11</sup> and amount in excess of this limit can be deducted in the next four fiscal years.

The company must recognize revenues and expenses under the accrual basis of accounting. A legal definition of the accrual basis of accounting exists.

If the revenues received by the company exceed 2,300 Tax Reference Units<sup>12</sup> (UITs) and the company carries out transactions with related companies, then to prove compliance with the transfer pricing regulations, it must file the Local Report informative return. Moreover, if the company forms part of a multinational group, then it must file the Master Report informative return, provide the group's revenue exceeds 20,000 UITs.

If the company is the home office of a multinational group, then it must file the Country-by-Country Report informative return, if the consolidated revenue exceeds or is equal to S/2,700,000.00.

## 4.2 VALUE ADDED TAX (IGV)

Value Added Tax (IGV for its acronym in Spanish) is levied on the sales price or consideration agreed upon with respect to the following transactions:

- a) Sale of real property in Peru, including some intangible property.
- b) Rendering of services in Peru.
- c) Construction contracts.
- d) The first sale of real property (other than land) by the construction company.
- e) Import of goods and services.

Concerning the transactions referred to in items (i), (ii), (iii) and (iv), IGV is calculated and paid on a monthly basis by compensating the IGV

(accumulated from said transactions) against the IGV borne by the company (paid by the company for the purchase of goods, import or rendering of services and import of goods related to its object).

Concerning the import of goods, IGV will be paid at the time of requesting the entry of the relevant goods to Peru. Finally, as far as the import of services is concerned, IGV will be paid within the term available to pay the taxes payable in the month the services are paid to the supplier or the invoice is registered in the purchase register, whichever occurs earlier in time.

The export of goods and the export of services, to the extent some specific requirements are met, are not subject to IGV. Exporters can get a refund on the IGV they have borne, up to a limit equivalent to 18% of the amount of their exports or otherwise compensate said amount against the tax they must pay to the national government (that is, income tax and the temporary tax on net assets).

The effective VAT rate applicable in 2018 is 18% (VAT: 16% and IPM: 2%).

## 4.3 TEMPORARY TAX ON NET ASSETS (ITAN)

ITAN is levied on the total value of the company's net assets, the applicable rate being 0.4% (S/ 1,000.000.00 soles will be deducted from this total value). This tax can be paid either in only one installment (within the term established for the payment of taxes accrued in March) or in nine installments.

Once paid, this tax can be compensated against income tax prepayments or against the annual income tax payment to be made in the same fiscal year. If it is compensated against the annual income tax payment and there is still an outstanding balance, then the company will be authorized to apply for a refund of said balance.

<sup>11</sup> Net income after offsetting losses plus net interest, depreciation and amortization.

<sup>12</sup> As of January 1, 2023, the Applicable Tax Unit is PEN 4,950.00.



## 4.4 TAX ON FINANCIAL TRANSACTIONS (ITF)

ITF is levied on any amount debited from or credited to any bank account kept in Peru's banking system. The ITF rate is 0.005%. Some transactions are exempt from ITF, like the payment of taxes and deposits and payments made in accounts opened by employees exclusively for the payment of their salaries.

## 4.5 TAXES LEVIED ON THE REMUNERATION AND COMPENSATION OF EMPLOYEES

Salaries, remunerations and, in general, any type of revenue received by employees as a result of their employment relationship are considered 5th-category income and are subject to the payment of income tax, which must be withheld by the employer. The employer must withhold every month a percentage of the annual income tax levied on the total annual 5th-category income received by employees considered to be domiciled in Peru for tax purposes<sup>13</sup>. To this end, the employer must calculate the revenue receivable by the employee (deducting 7 UITs<sup>14</sup>, which is the only deduction to be made by the employer), and apply the applicable rates, according to the following table:

AMOUNT OBTAINED BY ADDING THE NET EARNED INCOME AND THE FOREIGN-SOURCE INCOME	RATE
Up to 5 UIT	8 %
Over 5 UIT up to 20 UIT	14 %
Over 20 UIT up to 35 UIT	17 %
Over 35 UIT up to 45 UIT	20 %
Over 45 UIT	30 %

Once the employee's annual income tax has been calculated, the amount to be withheld every month from the remuneration payable to employees will be calculated.

## 5. WHAT IS PERU'S LABOR REGIME?

### 5.1 EMPLOYEE HIRING

#### LEGAL WORKING AGE

In Peru, children reach adulthood at age 18. To employ underage persons, authorization from the Labor Ministry is required.

The minimum age for admission to employment is 12 years old; except for the following activities:

- Non-industrial agriculture: 14 years old.
- Industry, trade and mining: 15 years old.
- Industrial fishing: 16 years old.

#### TRIAL PERIOD

##### Duration

Three months (applicable to all employees). After the end of the trial period, the employee is protected against arbitrary dismissal.

##### Extension

- **Admissibility:**
  - When a training or adaptation period is required.
  - When so justified due to the nature of the work to be performed or the degree of responsibility involved.
- **Maximum term:**
  - Up to 6 months: for **skilled** employees or employees filling positions **"of trust"**.
  - Up to 1 year: for **management** employees.
- It is not authorized for **non-skilled** employees.
- Requirements: justify the reason in writing and comply with the maximum term.

#### Rights

- Severance pay, if the employee has exceeded one month of work.
- Unused accrued vacation.

<sup>13</sup> Individuals living 183 consecutive days or more in Peru during any period of 12 months will be deemed to be domiciled in Peru.

<sup>14</sup> As of January 1, 2023, the Applicable Tax Unit is PEN 4,950.00.





- National Holiday or Christmas bonus (proportionally, if the employee has not completed 6 months of service before the date of payment).
- Profit sharing (companies which fall within the scope of Legislative Decree No. 892), by the deadline for the profit-sharing distribution to be made.

## CONTRACTS SIGNED FOR AN INDEFINITE PERIOD

### Requirements

- Register the worker in the T-Registro (electronic payroll).
- An oral contract is also possible.

### Rights

- The employee can only be dismissed for "just cause" duly proved and typified in the law.
- Compensation for arbitrary dismissal: for each full year of services: 1 ½ monthly regular remuneration (the limit being 12 monthly regular remunerations). Fractions of a year will also be paid.

## FIXED TERM CONTRACT (TEMPORARY)

- Temporary hiring of personnel is legally feasible under any of the modalities set out in the Private Sector Labor Law, as detailed below:

MODALITIES	MAXIMUM TERM
<b>TEMPORARY EMPLOYMENT</b>	
i. Start or launch of new activities	03 years
ii. Transient Increase in Demand	05 years
iii. Corporate reconstruction	02 years
<b>SPORADIC EMPLOYMENT</b>	
i. Occasional	06 months a year
ii. Substitution	As necessary
iii. Emergency	As necessary
<b>WORK OR SERVICE</b>	
i. Specific	As necessary
ii. Casual	Not limited
iii. Seasonal	Not limited

Where applicable, it is possible to enter into different modalities of employment contracts successively, provided that together they do not exceed the maximum 05-year term.

### Requirements

- Written contract (legal formalities).
- Does not need to be submitted to the Ministry of Labor.
- There is a correlation between the work and the contract modality.

### Rights

- The same benefits as Permanent Employment Contracts.
- Severance pay for unfair dismissal: 1.5 salaries per outstanding month until the expiration of the agreement (Maximum: twelve monthly salaries).

## FOREIGN EMPLOYEES

### When can they start working

Foreign nationals can only start working if:

- Their employment contract has been approved by the Labor Ministry.
- They have already obtained a "work visa" issued by the National Immigration Superintendency.
- As from October 12, 2018, employment contracts signed with foreign nationals (modifications/extensions) are considered approved as from the date of filing with the Labor Administrative Authority through the online system for contracts with foreign nationals.
- Only the following documents must be attached to the application: (i) written employment contract; (ii) affidavit stating that the contract signed with the foreign national complies with the requirements set forth in the law and that the foreign national has the required training or work experience; and (iii) voucher evidencing



payment of the applicable rate to the Administrative Labor Authority.

## Limits on the hiring of foreign employees

- **Maximum number:** up to 20% of the total number of company employees.
- **Maximum amount of their remuneration:** up to 30% of the total company payroll.
- **Exemption from the maximum percentages:** a special procedure is to be followed and the exemption is only admissible in the cases authorized by the law, such as:
  - i. Specialized professionals or technical personnel.
  - ii. Management employees needed for a new business activity or for business reconversion processes.

## Requirements

- Entering into a written contract (complying with the formalities set forth in the law).
- Filing of the contract with the Labor Ministry.
- Maximum term: 3 years, although the contract can be successively extended. The employer must undertake to train national employees to do the same job.
- Documents to be submitted: Apart from the written contract, an affidavit issued by the company, stating that the hiring of the foreign national complies with the requirements set forth in the law and that the foreign national has the necessary training or experience to fill the position offered to him/her.

## Exceptions

- The percentage limits and the special procedure do not apply to foreign nationals married to a Peruvian national or having Peruvian ascendants, descendants or siblings, among others.
- The law also contemplates other exceptions, such as Spanish nationals, foreigners having the immigrant status,

foreigners who have obtained residency under the Mercosur and Peru-Argentina conventions, and Andean Community of Nations (CAN) citizens.

## Rights

- The same benefits granted to national employees.
- Compensation in case of arbitrary dismissal: 1.5 monthly remunerations per month still to run until the end of the contract, subject to a limit of 12 monthly remunerations.
- Those exempt who are considered Peruvian nationals employed under a fixed-term agreement will have the right to receive 1.5 monthly remunerations per month still to run until the end of the contract, subject to a limit of 12 monthly remunerations. Meanwhile, those employed under an open-ended agreement will be subject to the rule of one and a half monthly regular remunerations per full year of services (subject to a limit of 12 monthly regular remunerations).

## 5.2 LABOR RIGHTS AND BENEFITS

### MINIMUM LIVING REMUNERATION

S/ 1025 per month.

### SEVERANCE PAY (CTS for its acronym in Spanish)

#### Concept

It consists of a deposit to be made by the employer on a mandatory basis every six months in a bank, financial institution, cooperative or mutual entity elected by the employee.

#### When to deposit the CTS

Within the first fortnight of May and the first fortnight of November every year.

#### Amount to be deposited

As many twelfths of the remuneration received in April and October (depending on the date the



deposit is made) as full months worked by the employee. Fractions of a month will be calculated in thirtieths.

## Computable remuneration

The basic remuneration plus all amounts regularly received by and freely available to the employee, including remunerations in kind, average bonuses, average overtime, any permanent bonus, etc.

## NATIONAL HOLIDAY AND CHRISTMAS BONUS

### Concept:

The employer must pay two bonuses every year, a National Holiday Bonus (July 28th) and a Christmas Bonus (December 25th).

### Amount:

- Each bonus is equivalent to **one full remuneration** if the employee has worked 6 full months before the date of payment. Otherwise, it will be proportional to the number of **months worked**.
- To calculate the amount, the employee's monthly regular remuneration must be used as a basis, while variable or non-fixed remunerations will be included as part of the benefit to the extent the employee has received them at least three times during the corresponding semester. These amounts are added and the result is divided by six.
- National holiday and Christmas bonuses are not subject to any type of contribution or deduction, except for deductions to be made according to law or authorized by the employee. The 9% contribution that companies will not pay to Essalud will be delivered instead to the corresponding employees as a "temporary and extraordinary non-remunerative non-pensionable bonus".
- For employees who have joined a Health Provider Company (EPS for its acronym in Spanish), the bonus will be equivalent to 6.75% of the amount of the bonus.

## Term

The bonuses must be paid within the first fortnight of July and December, respectively.

## Requirements

Only those employees who are working for the company during the first fortnight of July or December are entitled to receive it. This benefit also applies to employees who are on vacation or on leave with pay, are receiving sickness allowance, maternity allowance, etc.

## Unused accrued bonus

If the employee is not working for the company on the date the benefit is to be paid, but has worked for the company at least one (1) full month in the respective semester, then he/she will be entitled to receive a bonus in proportion to the full calendar months he/she has worked.

## VACATION

### Vacation record

- After completing one calendar year of services, all employees are entitled to use their vacation time, provided they have completed the following vacation record:
  - If they work 6 days a week: 260 days of actual work.
  - If they work 5 days a week: 210 days of actual work.
  - If their work schedule consists of 3 or 4 days of work, or if the work is suspended by the Administrative Labor Authority, then unjustified absences cannot exceed 10 days.

### Vacation time

- 30 calendar days, regardless of the employee's seniority.
- It is possible to divide the vacation time into two periods: (i) 15 days in two uninterrupted periods of 7 and 8 days, and (ii) the balance in periods which can even be shorter than 7 calendar days with a rest



period of no less than 1 calendar day, at the written request of the employee.

- It is also possible to reduce the vacation period to 15 days if the company pays the employee for the 15 vacation days not used by the employee. A written agreement is required.
- Accumulating two consecutive periods is possible.

## **Vacation pay**

- The same amount that the employee would receive if he/she continued working normally; that is, one full remuneration.

## **Unused accrued vacation**

- The vacation benefit accrues on a daily basis; therefore, if the employee stops working for the company without having completed his/her vacation record (additional), then he/she must receive as many twelfths of one monthly remuneration and thirtieths of one-twelfth as number of months and days worked by the employee. This applies provided a month of service has been completed.

## **Legal term available to use the vacation benefit**

- The vacation benefit must be used at any time during the year immediately following the year in which the employee completed his/her vacation record.

## **Compensation for not granting accrued vacation time**

- If the employee does not use his/her accrued vacation time within the applicable legal term, then he/she will be entitled to compensation equivalent to one remuneration, plus another remuneration for the month worked, plus another remuneration for the unused vacation benefit (a total of three remunerations).
- Managers or company representatives who decide not to use their accrued vacation

time are not entitled to the aforesaid compensation.

## **WEEKLY REST**

### **Concept**

- All workers have the right to rest for a minimum of 24 consecutive hours every week, preferably on Sundays.

### **Remuneration**

- The remuneration payable for the weekly rest day is equivalent to the regular daily work pay and is paid in direct proportion to the number of days actually worked.

## **MAXIMUM WORKING TIME AND OVERTIME**

### **Maximum working time**

- The maximum working time is 8 hours a day or 48 hours a week, although it can be reduced by agreement or according to law or customary practice.

### **Surcharge for working overtime**

- Work performed beyond the regular working day must be subject to a surcharge. The minimum surcharge for overtime worked is, for the first two hours of overtime, 25% of the rate paid for normal hours of work, while for the remaining hours of overtime, it will be 35% of the rate paid for normal hours of work.

### **Compensating overtime with compensatory time off**

- The employer can compensate overtime in respect of which the above surcharge is to be paid by granting leaves or rest periods the length of which must be consistent with the length of the overtime worked (hour bank). A written agreement is required for that purpose.

## **PROFIT SHARING**





## Concept

- It applies to all economic sectors, except for companies having 20 or less employees; cooperatives; autonomous companies; and civil society organizations.
- In each taxable year, the employer must set aside a percentage of its pre-tax net income after deducting losses (previous years).

ECONOMIC SECTOR	PERCENTAGE
Mining companies	8%
Fishing companies	10%
Telecommunication companies	10%
Industrial companies	10%
Stores and restaurants	8%
Agrarian companies	5% between 2021-2023, 7.5% between 2024-2026, and 10% from 2027 onwards.
Other activities	5%

## Form of distribution

The amount deducted must be distributed in cash among all the employees: 50% in proportion to the number of days worked, and 50% in proportion to their payments received.

## Term

It must be paid within a term of 30 calendar days counted as from the date immediately following the expiration of the term available for filing the balance sheet of the year (Income Tax Return).

The limit for this benefit is 18 monthly salaries per worker.

## FAMILY ALLOWANCE

### Concept

- It is a remunerative benefit aimed at helping employees support their children.

- Employees whose remuneration is regulated through collective bargaining agreements are entitled to this benefit.
- It is paid in the same way and as frequently as the remuneration.

## Amount

It is equivalent to ten (10) percent of the minimum living wage in force on the date of payment. It currently amounts to S/ 93.00.

## Requirements

The right to claim this benefit requires that the employee have under his/her custody one or more children under the age of eighteen (18). If a child, upon reaching the legal age, is pursuing higher or university education, then the employee will have the right to claim this benefit until his/her child completes said studies or turns twenty-four (24) years old. All workers with one or more children, over the age of 18, with severe disability duly certified as per the regulations of the national health authority will also receive this payment unless they are under a non-contributory pension scheme for severe disability established by Act No. 29973, General Act on Individuals with Disabilities.

## 5.3 CONTRIBUTIONS AND TAXES LEVIED ON THE REMUNERATION

### a) Essalud contributions

9% of the monthly "insurable remuneration", payable by the employer.

### b) National Pension System - ONP

13% of the monthly "insurable remuneration", payable by the employee.

### c) 5th-category income tax

The rates listed below are levied on the remuneration received in any tax year running from January 01 through December 31 of each year, after deducting 7 tax reference units (S/ 32,200). It is to be paid by the employee.



ADDITION OF THE NET EARNED INCOME AND FOREIGN-SOURCE INCOME	RATE
Up to 5 UIT	8%
Over 5 UIT, up to 20 UIT	14%
Over 20 UIT, up to 35 UIT	17%
Over 35 UIT, up to 45 UIT	20%
Over 45 UIT	30%

## d) Private Pension System - AFP

10.00% (estimated) of the monthly "insurable remuneration" plus a commission (which fluctuates between 1.47% and 1.69% of the insurable remuneration) and an insurance premium covering disability, survival and funeral expenses (1.36% of the insurable remuneration). It is to be paid by the employee.

## e) Occupational accidents and diseases (Supplementary Insurance against Risky Work-SCTR)

- Health: Essalud/EPS.
- Disability and survival allowance and funeral expenses: ONP /private insurance company (only companies performing activities which involve a high risk)

The minimum rate in the health sector is 0.53% of the insurable remuneration, while in the pension sector the contributions are determined by the ONP or by the parties if they take out health insurance with a private insurance company. It is to be paid by the employer.

## f) SENATI [only applicable to industrial companies or whoever hires employees to carry out installation, repair or maintenance work]: 0.75% of the monthly "insurable remuneration", payable by the employer.

different countries, foreign trade becomes the most important source of revenue for a country and a possibility of obtaining, through international trade exchange, the goods needed by the different sectors of the economy, either for production or consumption purposes. The largest benefit of this trade, which transcends borders, is that national exporters have larger markets to sell their products, while consumers have greater possibilities to buy the goods they need or otherwise goods which are in short supply on their local market. As an economic mechanism, foreign trade is an efficient tool to handle local prices and, to a certain extent, it allows improving the quality of life of people. Being commercially isolated or otherwise fully self-sufficient is not an option for any country nowadays.

Moreover, it should be noted that the larger or smaller development of foreign trade in a country largely depends on its legal framework. However, uniform rules, uses and practices, which are considered a source of law in international trade, should also be borne in mind.

As a matter of fact, the principles and legal rules designed by any given State to regulate the import and export of goods, their tax treatment, benefits, temporary and permanent exemptions, the implementation of health rules, antidumping mechanisms and subsidies, the signing of or adhesion to international instruments dealing with procurement, transportation, insurance, documentary credit, etc. and the country's participation as a member state in regional or intraregional trade agreements, undoubtedly determine the manner in which international trade is carried out, influenced by the economic and commercial policy designed by the government in office. These systems are characterized by the greater or lesser degree of freedom and the regulations applicable to the import and export of goods and the flow of capital and, within this context, we can see that there are both countries with a liberal economy and protectionist countries.

## 6. HOW IS FOREIGN TRADE REGULATED IN PERU?

### 6.1 GENERAL OVERVIEW

Under the current world context, where new strategic business alliances are developed between



Now, as far as Peru is concerned, the legal rules governing foreign trade have changed significantly, particularly in the last few years. The import and export of goods was excessively controlled in the 70s. A shy liberalization process was carried out in the 80s, actually during the first four years of that decade, but foreign trade control and regulation were resumed and continued until July 1990.

Trade opening began in the 90s. As a matter of fact, foreign trade was liberalized and new rules were enacted, resulting in a 180-degree turn with respect to past policies which did not have the expected success. Legislative Decree No. 668 was issued to establish the legal framework of foreign trade. A new General Customs Law was also promulgated by means of Legislative Decree No. 772 to reform the customs system, based on the Kyoto Convention.

Legislative Decree No. 809 was then issued, but it was repealed by Legislative Decree No. 1053, which is the current General Customs Law, published on June 27, 2008 in the Official Gazette El Peruano. As a result of this last regulatory change, customs tariffs were reduced and standardized. For instance, rates of 50%, 25% and 15% were gradually reduced to 0%, 4%, 6% and 11%.

In this way, we can see that during the last decade imports and exports have been significantly liberalized, to the extent para-tariff barriers have been gradually reduced and previous licenses and the registration of importers and exporters has been eliminated. The existing restrictions and prohibitions on the import and export of goods to and from the country are basically based on health, public safety and environmental criteria. All temporary and permanent tax exemptions related to the import of goods have been eliminated, the only existing exemptions are those contemplated in the Constitution and in international agreements signed by Peru. Some sector-based tariff benefits have also been regulated on an orderly basis, for instance in the mining sector, in order not to create tax evasion or avoidance mechanisms.

Another positive aspect of the changes introduced in Peru's foreign trade is the modernization of the entity currently in charge of regulating and collecting import duties in Peru, the National Superintendency of Customs and Tax Administration (SUNAT), which is in charge of regulating the operating procedures of customs regimes and operations within a framework of flexibility and simplification, inspired by the principles of truthfulness and good faith enshrined in its regulations. Although the regulatory framework applicable to foreign trade and customs operations in Peru can still be improved, we believe that we currently have a modern and agile regulatory framework which actively contributes to the growth of foreign trade.

## 6.2 OPENING UP TO FOREIGN TRADE – CURRENT POLICY

### PRINCIPLES SUPPORTING FREE FOREIGN TRADE IN OUR COUNTRY:

Legislative Decree No. 668 opened up our country to foreign trade, guaranteeing free domestic and international trade as a basic condition to achieve the country's development. To this end, a series of important principles and rules have been approved since 1991, resulting in the establishment of a sound framework that is contributing to the growth of foreign trade in Peru. The most important principles and rules include:

- Free trade
- Elimination of monopolies
- Free possession of foreign currency
- International trade negotiations
- Prohibition on import surcharges
- Customs valuations must reflect real prices
- Streamlining of permanent or temporary tax exemptions
- Elimination of para-tariff measures
- Technical standards will not hinder trade
- Fight against dumping and subsidies



## 6.3 FOREIGN TRADE OPERATORS, PARTICIPATING OPERATORS, AND RELATED THIRD PARTIES

Decree-Law No. 1433 amended the General Customs Law, varying, among other topics, the rules on foreign trade participants. According to the changes introduced by Legislative Decree No. 1433, foreign trade participants are classified into: (i) Foreign Trade Operators (FTOs), (ii) Participating Operators (PO), and (iii) Related Third Parties.

- **Foreign Trade Operators (FTOs):**

According to the General Customs Law, the expression *foreign trade agents* (OCE, in Spanish) includes customs clearance agents, carriers or their representatives in the country, international cargo agents, customs warehouses, mail service companies, courier service companies, duty free warehouses (Duty Free), and beneficiaries of aeronautical material, international multimodal transportation agent, guarantor association, and issuing association.

- **Participating Operators:**

The General Customs Law establishes this category for importers, exporters, port facility managers, etc.

- **Related Third Parties:**

Meaning those parties related to customs or customs-related operations, who do not qualify as foreign trade operators or participating operators.

## 6.4 CUSTOMS REGIME GOVERNING IMPORTS FOR CONSUMPTION

The import-for-consumption regime is a customs regime authorizing the lawful entry of goods from foreign countries in order to be consumed in the country, after paying or guaranteeing the payment, as the case may be, of customs duties and other applicable taxes, including surcharges and fines, if any, and complying with all relevant formalities and customs obligations. Foreign goods are deemed to have been nationalized once their clearance has been authorized.

## WHO CAN IMPORT GOODS TO PERU?

Anyone can import goods to Peru, either an individual or a legal entity (company), without being subject to any previous registration. For purposes of the proper identification of the importer, the owner or consignee must have a valid Taxpayer's Registration Number (RUC for its acronym in Spanish) and known whereabouts. The importer's RUC number, name or trade name, code and address must be reported exactly as all these data appear on SUNAT's register; otherwise, the Customs Clearance System (SDA for its acronym in Spanish) will reject the numbering of the Customs Declaration Form (DAM).

Those persons who are not obliged to obtain a RUC number can resort to the import for consumption regime by using their ID Document (DNI) number in the case of Peruvian nationals, or their Foreign National ID Card, passport or travel document in the case of foreign nationals. These persons include:

- a) Individuals importing goods occasionally, provided the FOB value of the merchandise does not exceed one thousand US dollars (US\$ 1,000.00) per transaction and further provided that they make no more than three (3) imports per year.
- b) Individuals making only one import in a calendar year, provided the FOB value of the merchandise exceeds one thousand US dollars (US\$ 1,000.00) and further provided the FOB value thereof does not exceed three thousand US dollars (US\$ 3,000.00).
- c) The members of the national or foreign diplomatic service and the officers of international organizations who, exercising the rights contemplated in the legal rules in force, bring their motor vehicles and household goods to the country.

## GOODS WHICH CAN BE IMPORTED

Importers are allowed to freely import all kinds of goods, except for prohibited or restricted goods. Goods whose import is forbidden cannot be





earmarked for the import for consumption regime. However, restricted goods can be imported, provided the importer has available, before the customs declaration has been numbered, the documents required by the applicable rules, except for those cases in which, as provided for in special rules, the aforesaid documents are obtained after the customs declaration has been numbered.

## METHODS AVAILABLE AND TERMS TO BE FULFILLED TO IMPORT GOODS FOR CONSUMPTION

Goods can be imported through the import for consumption regime by resorting to the following methods:

**a) Early clearance:** this modality allows numbering the customs declaration before the arrival of the goods; it is not possible to do it if the means of transport has already arrived to the port of import to the country. Declarations can be rectified within the fifteen (15) calendar days, following the last date of unloading, without having to pay any fines, except as otherwise provided in the Regulations to the General Customs Law, approved through Supreme Decree No. 010-2009-EF.

The advanced customs clearance procedure is mandatory, except in the case of goods, primarily: (i) goods with FOB values that do not exceed two thousand US dollars (USD 2,000.00), (ii) goods shipped as priority dispatch, (iii) goods shipped domestically and under a different customs clearance procedure, (iv) goods eligible for contingency fees, (v) goods coming from customs free areas or special development zones, (vi) restricted ones, (vii) considered as “current goods” or used vehicles, (viii) successive sales in primary zones, among others.

**b) Urgent clearance:** urgent clearance applies to urgent deliveries and emergency relief deliveries. Its procedure may start before the

arrival of transportation vehicles, and up to seven (07) calendar days after the end of unloading operations. Upon expiration of this term, the goods will be subject to the deferred clearance process.

Urgent deliveries refer to goods which, given their nature or the place where they must be stored, require priority treatment. Moreover, emergency relief deliveries refer to goods sent to help the victims of natural disasters, epidemics, and accidents.

**c) Deferred clearance:** can be requested after the arrival of the transportation vehicle. An unloading term extension can be requested up to fifteen (15) calendar days following the last date of unloading, in duly justified cases, only once, and for an additional fifteen (15) calendar day term.

## STEPS TO BE TAKEN WITH CUSTOMS TO RESORT TO THE IMPORT FOR CONSUMPTION REGIME

Numbering of the customs declaration: the customs clearance agent asks that the relevant goods be subject to the import for consumption regime by electronically transmitting all applicable data, using the “Declaración Aduanera de Mercancías” DESPA-IT-00.04 form and complying with the data transmission requirements published on the website of SUNAT.

**a) Payment of the customs-related tax debt and surcharges:** the customs-related tax debt and surcharges must be paid as follows:

In customs clearance processes supported by the previous guarantee referred to in Article 160 of the General Customs Law <sup>15</sup>:

- Early and urgent clearance processes numbered before the arrival of the means of transport, from the date the customs declaration is numbered until the twentieth

<sup>15</sup> Article 160 of the General Customs Law provides that importers and exporters and beneficiaries of the customs regimes can file, before the customs declaration has been numbered, global or specific guarantees securing the payment of the customs-related tax debt, and provisional or final antidumping and compensatory duties, advance collections and other applicable payment

obligations. The guarantee is global when it secures the fulfillment of the obligations related to more than one customs declaration or application to resort to a customs regime and is specific when it secures the fulfillment of obligations derived from a customs declaration or application to resort to a customs regime.



calendar day of the month immediately following the end of unloading operations.

- Deferred and urgent clearance processes numbered after the arrival of the means of transport, from the date the customs declaration is numbered until the twentieth calendar day of the month immediately following the date the customs declaration was numbered.

In customs clearance processes not supported by the previous guarantee referred to in Article 160 of the General Customs Law:

- Early and urgent clearance processes numbered before the arrival of the means of transport, from the date the customs declaration was numbered until the end of unloading operations.
  - Deferred and urgent clearance processes numbered after the arrival of the means of transport, on the same date the customs clearance was numbered.
- b) **Document review:** the customs officer receives all documents supporting the customs declaration selected to go through the orange channel and checks the relevant documents.
- c) **Physical inspection:** Goods supported by a DAM selected to go through the red channel or the orange channel when the Customs Administration has ordered that the goods be physically inspected, are to be physically inspected.
- d) **Removal of goods:** the ports of arrival, temporary warehouses, ZEDs or the Zofratacna will allow that the goods be removed from their facilities after checking the information contained on the website of SUNAT with regard to the authorization for the clearance of the relevant goods and, if applicable, after making sure that the preventive measure ordered by the customs authority has been invalidated.
- e) **Documents required for the import:**
- Customs Declaration Form (DAM)
  - Commercial invoice
  - Shipping document

- Transportation insurance policy
- Control document (for restricted goods)
- Certificate of origin, when applicable
- Other documents required bearing in mind the nature or origin of the goods and as required by the customs regime, as provided for in the applicable legal rules.

## 6.5 IMPORT TAXES AND CUSTOMS-RELATED TAX OBLIGATIONS

### IMPORT TAXES

The taxes levied on the import of goods depend on the classification of the goods in the Schedule of Customs Tariffs, determined by the customs sub-tariff which will be defined based on the information provided by the importer, through the invoice and other supplementary information, and also based on the outcome of the physical inspection conducted by the customs specialist, at the time of clearance.

Following are the main taxes levied on the import of goods:

- Ad valorem tariff (the applicable rates being 0%, 4%, 6% and 11%, as the case may be).
- Value added tax (16%).
- Municipal promotion tax (2%).
- Selective consumption tax (ISC): it consists of variable rates depending on the national sub-tariff where the goods are classified.
- Antidumping or compensatory duties, depending on the product and its country of origin.
- VAT advance collection regime.
- Other taxes, such as specific taxes, provisional corrective duties, etc., as the case may be.

### TAXABLE BASE

The taxable base for the calculation of customs duties will be determined according to the valuation system in force. The rate applicable to customs duties will depend on the customs schedule and other relevant rules. The taxable base



and the rates applicable to the remaining taxes will be applied according to the rules applicable to each tax.

The customs duties and other taxes to be levied on the import will be those in force on the date the customs-related tax obligation arises.

## ORIGIN OF THE CUSTOMS-RELATED TAX OBLIGATION

For purposes of the customs-related tax obligation, it arises at the following moments, depending on each case:

- a) Concerning imports for consumption, on the date of numbering of the customs declaration.
- b) For goods to be moved from special taxation areas to common taxation areas, on the date of filing of the transfer application.
- c) For the transfer of imported goods enjoying a definitive or temporary tax exemption, on the date of filing of the transfer application.
- d) For the temporary admission for re-export in the same condition and temporary admission for inward processing, on the date of numbering of the customs declaration pursuant to which the regime was requested.

The customs-related tax debt consists of import duties and other applicable taxes and, when appropriate, fines and interest.

In addition, it is worth noting that as a result of the amendments to the General Customs Law, through Decree-Law No. 1433, the regulation regarding the origin of the taxable customs obligations was modified, by including as an additional source to determine the customs destination any business document other than the customs declaration. Namely, the customs destination can be requested through the transmission or submission of an official or business document other than the customs declaration (for example, a commercial invoice).

## 6.6 CUSTOMS REGIME GOVERNING THE DEFINITIVE EXPORT OF GOODS FROM PERU

It is not a secret that encouraging the export of goods is an important target in any economic policy, even more so if we bear in mind that attracting foreign currency is important not only for the economic development that most governments seek, but also for social development. In its customs-related regulatory framework, Peru has established very clear guidelines to minimize requirements and/or obstacles in order for exports to be made in a short term and at a low cost.

Thus, for example, it has been established that exports are not subject to the payment of any tax whatsoever. On the other hand, any good can be freely exported, except for restricted or prohibited goods, which are itemized on lists approved by legal rules regularly issued, without limitation, by the Economy and Finance Sector and also by the Agriculture Sector.

### REGULATING THE DEFINITIVE EXPORT REGIME:

The Definitive Export Regime is a customs regime pursuant to which national or nationalized goods leave Peru's customs territory in order to be used or otherwise definitively consumed abroad. In other words, it is the procedure which allows us to remove goods from Peru's customs territory and take them abroad.

This regime is not subject to any tax whatsoever, because the idea is to promote foreign trade, which results in our country's development.

- a) **Exportable goods:** According to Article 62 of the General Customs Law, any good can be exported, except for those typified by law as "prohibited", in which case they cannot resort to the definitive export regime. It should be pointed out that the definitive export regime is not available either to goods belonging to the country's cultural and/or historical wealth.

Concerning goods typified by law as "restricted", to resort to the definitive export



regime they must obtain the authorizations, certifications, licenses or permits to be granted by the competent sector on or before their shipping date.

- b) **Who can make the exports:** as a result of the liberalization of foreign trade in 1991, any person, whether an individual or a legal entity (company), can export goods abroad without being subject to any previous registration or authorization.

## WHAT FORM IS TO BE USED TO RESORT TO THE EXPORT REGIME?

In order for goods to be exported, the DAM form is to be used. For goods the FOB value of which is less than or equal to five thousand US dollars (US\$ 5,000), the simplified declaration form can be used.

## STEPS TO BE TAKEN TO RESORT TO THE DEFINITIVE EXPORT REGIME

- a) **DAM numbering:** the customs clearance agent submits an application to the Customs Administration by e-mail, asking for the clearance of the relevant goods. If the Customs Administration finds that everything is ok, then Sigad will automatically assign a number to the DAM; otherwise, the customs clearance agent will receive an e-mail where the mistakes to be rectified will be explained.
- b) **Storage in a temporary warehouse:** The exporter will have the goods stored in a temporary warehouse after the definitive export declaration has been numbered (which means that the goods will enter a primary customs area where the temporary warehouse, the warehouses of airlines, the areas adjacent to Customs, etc. are located) prior to selecting the DAM control channel which, for exports, can be the orange channel (if the goods are authorized to go through this channel, then the goods will be ready to be shipped once the relevant documents are checked) or through the red channel (if the goods are authorized to go through this

channel, then it will be necessary to check the documents and inspect the goods).

- c) **Shipment:** the goods must be shipped within a term of thirty (30) calendar days counted as from the date immediately following the DAM numbering date.
- d) **Regularization of the regime:** The export is regularized within a maximum term of thirty (30) calendar days counted as from the date immediately following the end of shipment.

## DOCUMENTS REQUIRED TO MAKE AN EXPORT

Along with the DAM, the following documents are required:

- Shipping document.
- SUNAT's copy of the invoice, sales slip, operator's document (Code 34), participant's document (Code 35) or any other voucher evidencing the transfer of the goods to a customer domiciled abroad, provided said document is contemplated in the Payment Voucher Regulations, if applicable; or sworn statement evidencing the price and a description of the goods in those cases where no sale has been made. It is not necessary to provide a printout of the invoice or electronic slip.
- Document evidencing the power of attorney granted to the customs agent: copy of the duly endorsed shipping document or copy of the special power of attorney granted to the customs agent.
- Other documents which, given the nature of the goods, are required for their export.

In addition, the following documents will be required, if applicable:

- Copy of SUNAT's credit or debit note.
- Affidavit issued by the exporter of the commissions paid abroad, if this information does not appear on the invoice.
- Consolidated list of producers and copies of SUNAT's invoices issued by each of the producers that generated the export.





- Copy of SUNAT's invoice issued by the commission agent making the export through commercial intermediaries.
- Consolidated list of the participating interest held (in business collaboration agreements).
- Copy of the business collaboration agreement.
- Certificate of inspection of unloading operations when the clearance 05 option has been chosen (definitive export of fuel for vessels engaged in the extraction of highly migratory hydro-biological resources) issued by the General Directorate of Fish Extraction and Fishing of the Ministry of Production or by the regional production directorates.

## EASY EXPORT SYSTEM (EXPORTA FÁCIL)

It is a mechanism designed to promote exports, mainly by micro and small-sized enterprises, to gain access to international markets.

The Specific Procedure for Exports for Commercial Purposes through the Postal Service (DESPA-PE.13.01) describes the guidelines to be followed for the export of postal shipments for commercial purposes via the postal service. Through the Exporta Fácil mechanism, micro and medium-sized enterprises can export, resorting to a quick, economical and safe system, goods for a value not to exceed US\$ 7,500.00 or 50 Kg. per shipment.

This initiative has been possible thanks to the interinstitutional involvement of SUNAT, Serpost, Promperu, the Ministry of Transport and Communications - MTC, Mi Empresa, the Ministry of Economy and Finance - MEF, the Ministry of Foreign Affairs - MRE, Agencia Peruana de Cooperación Internacional - APCI, the Ministry of Labor and Social Promotion - MTPS, the Ministry of Foreign Trade and Tourism - Mincetur, and the National Competitive Council - CNC.

## 6.7 ONE-STOP SHOP FOR FOREIGN TRADE (VUCE)

### WHAT IS THE VUCE?

The One-Stop Shop for Foreign Trade - VUCE is a mechanism which makes it easier for the parties engaged in foreign trade and transportation to keep standardized information and documents in only one filing point to comply with all import, export and transit steps.

The information, in view that it is forwarded electronically, is to be submitted only once. The VUCE is an integrated system which allows the parties engaged in foreign trade and international transportation to electronically take all the steps required by the competent entities under the legal rules in force, or all the steps requested by said parties, in order for goods to move through, enter or exit the country.

The VUCE is mainly aimed at reducing the number of steps, avoiding dispersal, and providing standardized and quick answers in a transparent manner to exporters, importers and international market operators when the same request is made. The main idea is to facilitate, in terms of lower costs and shorter terms, import and export transactions in general.

### WHY IS THE VUCE SYSTEM JUSTIFIED?

- Goods are subject to State control (for sanitation, safety, and heritage protection reasons).
- Different parties take part in said control.
- The existing processes are deficient and cumbersome and lack integration.
- Duplication of the requirements established by government entities.
- Requirement to file documents issued by the State itself.
- The entities in charge of supervising or inspecting the goods fail to coordinate with each other at the time of inspecting the goods.
- The steps become more predictable.



## 6.8 AUTHORIZED ECONOMIC OPERATOR (AEO)

### WHAT IS AN AEO?

An AEO is an international trade operator that forms part of the logistical chain and is a safe person for SUNAT in view that the AEO has complied with legally established criteria, requirements and indicators and can therefore enjoy some benefits as far as customs control and simplification is concerned. The AEO is certified by SUNAT.

According to the customs regulations in force, it is possible for importers, exporters, customs agents, customs warehouse agents and express delivery service companies to be certified as AEOs.

### WHAT ARE THE BENEFITS OF AEO CERTIFICATION?

Concerning the benefits and facilities afforded by AEO certification, they mainly include expeditious movement of cargo through customs, higher security standards, lower costs along the logistical chain thanks to security efficiency, better reputation in the international market, greater business opportunities, better understanding of customs requirements, and better communication with other AEOs and the Customs Administration.



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