

PERU

Investment rules of the world

About

At DLA Piper, we have one of the largest finance and projects teams in the world with more than 600 dedicated lawyers and an established local law firm network. We share knowledge and skills in debt instruments, debt securities, funds, derivatives and portfolios, as well as energy, infrastructure and other projects, across Europe, the Middle East, Africa, Asia Pacific and the Americas.

When and wherever we work for you on finance and investment deals and projects, you can rely on our international platform; we are backed by the network and resources of one the largest and most-connected business law firms in the world.

We enjoy being part of your team, bringing experience across sectors, borders and financial products, supporting you on first-of-a-kind deals, in new markets and to grow.

With global perspective, we can help you to realize your financial strategy in whichever markets you do business.

Investment Rules of the World

With input from across our global network, this guide covers key legal topics for different financial activities and projects and gives you an overview of the points you may consider when initially looking at financing or investing in particular jurisdictions. Please [contact us](#) if you would like to discuss any legal issues or solutions for your business. We also welcome your feedback about this guide via investmentrules@dlapiper.com.



Peru

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Capital markets and structured investments

Issuing and investing in debt securities

Are there any restrictions on issuing debt securities?

There are certain restrictions on offering and selling debt securities under Peruvian law if those securities will be offered under a public offering.

A public offering of marketable securities is a public invitation to one or more individuals or legal entities of the general public, or specific segments thereof, to carry out a legal placement, acquisition or disposal of marketable securities.

The Securities Registry is where securities, securities issue program documentation, mutual funds, investment funds and participants in the securities market are registered, with the purpose of making the information thereon publicly available, allowing decision-making by investors and ensuring the market's transparency. The legal entities entered in this registry and the issuer of registered securities are obliged to submit the information required by law and other regulation and are accountable for the truthfulness of such information.

The publicly offered securities and securities issue programs documentation are required to be entered in the Securities Registry and no previous administrative authorization is required (except for, in the case of financial companies the previous authorization to be obtained from the Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS)). The registration of securities that will not be offered publicly is optional.

The holders of debt securities may request the registration of such securities in the Securities Registry in accordance with the provisions of the applicable law and the terms established in the issuance agreement or, as the case may be, the equivalent instrument. If no regulation has been set forth on this regard, the request must be backed up by the holders of such securities that represent the absolute majority of the outstanding amount issued.

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What are common issuing methods and types of debt securities?

The most common types of debt securities issued in Peru are bonds or notes issued on a stand-alone basis or under a program. A debt security is any right of debt issued on a mass basis that is transferable to third parties.

Many different types of debt securities are offered in Peru. According to the Regulations on the Initial Public Offering of Marketable Securities (*Reglamento de Oferta Pública Primaria y de Venta de Valores Mobiliarios*) (Resolution Conasev 141-1998-EF/94.10) and SMV supplemented regulations (*Normas Comunes para la Determinación del Contenido de los Documentos Informativos*) (Resolution Conasev 211-98-EF/94.11), some common forms include:

- securities granted by common companies (commercial paper, issued for debt younger than a year, and corporative bonds, issued for debts older than a year); and

- securities granted exclusively by authorized financial companies:
 - negotiable corporative certificates of deposit (issued for debt younger than a year);
 - corporative bonds (issued for debt older than a year);
 - subordinate bonds (issued for subordinate debt that qualify as effective equity); and
 - leasing bonds (issued for financing the purchase of goods for leasing).

Additionally, the securities listed above must have any of the following characteristics to qualify as typical securities:

- zero coupon securities that pay a fixed amount at its maturity;
- periodical fixed-rate securities, with amounts and maturity determined at its issue;
- securities with automatic adjustment of the principal according to the General Act of the Financial and Insurance Systems and Internal Organization Act of the SBS; and
- variable-rate securities, in which the interest rate cannot be a rate (such as LIBOR, PRIME, or others) plus a fixed differential.

Non-typical securities, which are the ones that are not listed above but have the characteristics of a debt security (which are not common in Peruvian securities), which may have any of the following characteristics, include:

- guaranteed securities, perpetual debt securities (ie debt securities that have no specified redemption date);
- asset-backed securities;
- derivative securities such as securities linked to the value of one or more reference asset including shares, commodities, interest rate, currency rate or index, and credit-linked notes;
- hybrid securities (securities with both debt and equity features);
- equity-linked securities such as convertible bonds (debt securities convertible into the equity of the issuer);
- exchangeable bonds (debt securities convertible into the equity of a third party);
- depositary receipts (a security issued by a depositary conferring its holders beneficial ownership of certain underlying assets held by the depositary); and
- warrants (securities giving its holders the option to purchase the equity of the issuer or a related company).

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What are the differences between offering debt securities to institutional / professional or other investors?

An offering that exclusively targets institutional investors is considered as a private offer and the regulations established in the [Securities Act \(Ley del Mercado de Valores\)](#) will not be applicable.

In that scenario, securities acquired by an institutional investor cannot be transferred to third parties, unless such third party is another institutional investor or the security is previously entered in the Securities Registry conducted by the Superintendence of Securities Market (SMV).

Nevertheless, institutional investors can decide whether to register before the Securities Registry under a special regime the following issues targeted to institutional investors: (i) the ones registered as such before the SMV; (ii) the ones registered before the U.S. Securities and Exchange Commission – SEC under Rule 144A or Regulation S of the U.S. Securities Act of 1933; (iii) the registered as such before other stock exchanges member of the Latin American Integrated Market (*Mercado Integrado Latinoamericano – MILA*).

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When is it necessary to prepare a prospectus?

Unless an exemption applies, it is necessary to prepare, register and publish a prospectus before the Superintendence of Securities Market (SMV) where there is an initial public offering (IPO) of securities, ie the public offering of new securities.

Among other reasons, the prospectus is needed in order to have a security subject to the IPO entered in the Securities Registry. The basic requirements for the preparation of the prospectus are stated in the Regulations on the Initial Public Offering of Marketable Securities (*Reglamento de Oferta Pública Primaria y de Venta de Valores Mobiliarios*) (Resolution Conasev 141-1998-EF/94.10) and SMV supplemented regulations (*Normas Comunes para la Determinación del Contenido de los Documentos Informativos*) (Resolution Conasev 211-98-EF/94.1.1).

In addition, there are other special regimes that require lighter requirements.

An offer would not be deemed to have been made to the public if it is made solely to qualified investors or where the minimum denomination per unit is at least PEN499,908.28 in 2019 (equivalent to approximately US\$147,770.70). The denomination per unit is annually adjusted.

The underwriting or acquisition of securities presupposes the acceptance by the underwriter of all terms and conditions of the offering, as they appear in the informative prospectus.

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What are the main exchanges available?

The unique legal stock exchange in Peru is the Lima Stock Exchange (*Bolsa de Valores de Lima S.A.*), which is a corporation (*sociedad anónima*) that offers listed securities trading services and provides services, systems and mechanisms for the brokering of publicly offered securities and instruments. The company operates under the supervision of the Superintendence of Securities Market (SMV).

Since 30 May 2011, Lima Stock Exchange (*Bolsa de Valores de Lima*), Santiago Stock Exchange (*Bolsa de Comercio de Santiago*), Colombia Stock Exchange (*Bolsa de Valores de Colombia*) and the Mexican Stock Exchange (*Bolsa Mexicana de Valores*) (since June 2014) established an alliance namely the Latin American Integrated Market (*Mercado Integrado Latinoamericano – MILA*) in order to foster the trading activity in those markets by allowing the intervention and operation of investors and intermediaries in any of such stock markets.

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Is there a private placement market?

Even though there are no official records, there is an active market for private placements. However, private pension funds – which are the principal investors in the Peruvian securities market – generally purchase securities that have information registered at the Superintendence of Securities Market (SMV).

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Are there any other notable risks or issues around issuing or investing in debt securities?

Issuing debt securities

Issuers are required to take responsibility for prospectuses for debt securities. Misleading statements in, or omissions from, any applicable offering document can give rise to administrative, civil and criminal liability under Peruvian law. Peru has various investor protection statutory provisions relevant to liability for inaccurate prospectus. There are also general fraud statutes and liability may also arise under common law through a civil action for deceit, negligent misstatement or misrepresentation.

Investing in debt securities

Debt security terms and conditions typically contain provisions which may permit their modification without the consent of all investors and confer significant discretion on the trustee, which may be exercised without the consent of investors and without regard to the individual interests of particular investors. The conditions also provide for meetings of investors to consider matters affecting the investors' interests. These provisions typically permit defined majorities to bind all investors including investors who did not attend and vote at the relevant meeting and investors who voted against the majority.

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Establishing and investing in debt / hedge funds

Are there any restrictions on establishing a fund?

Establishing a fund, offering fund securities and operating a fund, among other things, are regulated activities under the following laws:

- **private pension funds** – regulated under the [General Act of the Financial and Insurance Systems and Internal Organization Act of the Superintendencia of Banking and Insurance \(*Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros*\)](#) and its Regulations and therefore subject to the regulations of the Superintendencia of Banking, Insurance and Private Pension Fund Management Companies (SBS);
- **investment funds** – regulated under the Investment Funds and their Management Companies Act and its Regulation and therefore subject to the regulation of the Superintendencia of Securities Market (SMV);
- **mutual funds** – regulated under the Securities Market Act and its Regulations and therefore subject to the regulations of the SMV; and
- **collective funds** – regulated under the Collective Fund Act (*A las Empresas Administradoras de Fondos Colectivos contralará SMV*) – Executive Order 21907 and its Regulations and therefore subject to the regulations of the SMV.

An investment fund may be established through a general regime or a simplified regime.

All funds are subject to the general regime unless offers are:

- exclusively directed to institutional investors;
- directed to investors that will pay certain minimum quotas before the funds can operate; or
- directed to the management company's shareholders, directors and members of the 'Investment Committee'.

The incorporation of an investment fund under the simplified regime is automatically approved upon the submission of the required documentation. On the other hand, the incorporation of a fund under the general regime is subject to the approval and authorization of the SMV.

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What are common fund structures?

Common forms of private pension funds include:

- **capital protection** – minimum investment 100% in debt securities (maximum 100% short term and 75% long term);
- **capital preservation** – maximum 10% in equity securities, maximum 100% in long-term debt securities; maximum 40% in short-term debt securities and maximum 10% in derivatives;
- **mixed or balanced** – maximum 45% in equity securities; maximum 75% in long-term debt securities; maximum 30% in short-term debt securities and maximum 20% in derivatives; and
- **capital growth** – maximum 80% in equity securities, maximum 70% in long-term debt securities, maximum 30% in short-term debt securities and maximum 30% in derivatives.

Common forms of investment fund include:

- investments in any kind of securities, deposits, participation certificates on mutual funds, properties, leasing over properties, factoring and bills discounting;
- open-ended and closed-ended funds;
- retail and non-retail funds (including mixed investment funds);

- Undertakings for Collective Investments in Transferrable Securities (UCITS) and non-UCITS funds; and
- qualified investor structures that invest in, for example, corporate shares or bonds, real property, commodities (for example, precious metals) and derivatives.

Common forms of mutual funds include:

- **debt securities mutual funds** – 100% in debt securities minimum, sub-classified in very short term, short term, middle term and long term;
- **moderate mixed mutual funds** – 75% in debt securities minimum and 25% equity maximum;
- **balanced mixed mutual funds** – 50% in debt securities and 25% in equity securities as minimum investment;
- **growing mixed mutual funds** – 25% in debt securities and 50% in equity securities as minimum investment;
- **equity mutual fund** – 75% in equity as minimum investment;
- **partial secured mutual fund** – 75% of its capital is secured;
- **fixed income secured mutual fund** – 100% of its capital is secured and a minimum income;
- **secured mutual fund** – 100% of its capital is secured;
- **structured mutual fund**;
- **international mutual fund** – 51% in overseas securities;
- **mutual fund of mutual funds** – 75% in other mutual funds; and
- **flexible mutual fund** – any other criteria than above.

Common forms collective funds include different groups for purchasing:

- properties and mortgage payments;
- cars and trucks;
- machinery and equipment;
- motorcycles, moto-taxi and household appliances; and
- educational services.

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What are the differences between offering fund securities to professional / institutional or other investors?

For investment funds, the main difference is that if the fund's securities will be exclusively offered to institutional investors, the registration procedure of the funds will be conducted through the simplified regime. In that sense, the management company will not be obliged to present an advance copy of the agreement to be executed with its clients (which is needed for funds incorporated under the general regime) or require to register in advance the information regarding the investment fund and its issue.

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Are there any other notable risks or issues around establishing and investing in funds?

Establishing funds

There are no specific risks to reference here other than those referred to in [Establishing and investing in debt and hedge funds – establishment](#).

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Managing and marketing debt / hedge funds

Are there any restrictions on marketing a fund?

No, there are no limits or restriction on marketing a fund, except for common law principles applicable to all services and products that are offered in the market. The marketing must be done directly by the Fund Management Company or an authorized promotor (such as a brokerage firm representative).

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Are there any restrictions on managing a fund?

The Superintendence of Securities Market (SMV) is responsible for regulating and supervising funds. Fund managers, individuals and legal entities are prohibited from carrying on regulated activities, such as fund management, without authorization.

The SMV authorizes the organization and operation of a fund management company as a corporation (*sociedad anónima*) and supervises it as long as its purpose is to manage investment funds, mutual funds and collective funds. The Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS) authorizes the organization and operation of private pension funds.

All fund management companies need an authorization except for investment fund management companies whose funds only issue trust certificates not to be placed through public offerings, which are not supervised by the SMV, being obliged to inform such condition to their investors and clients.

The capital of management companies is prescribed by law and varies for:

- private pension fund management companies;
- investment fund management companies and mutual fund management companies; and
- collective fund management companies.

Additionally, the net equity of any management company must be at least than 0.75% of the sum of mutual fund and investment fund equities under its administration.

Management companies must obtain a business license either from the SMV or the SBS. The conditions applicable to the establishment of a management company remain throughout the company's existence.

Management companies are required to grant certain guarantees on behalf of the SMV in order to guarantee the compliance of the obligations assumed before their investors.

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Entering into derivatives contracts

Are there any restrictions on entering into derivatives contracts?

There are no restrictions on entering into derivatives contracts as all of them are executed on an 'over-the-counter' (OTC) basis, which means that contracts are negotiated and agreed between private parties without being regulated.

Without prejudice to the foregoing, the Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS) establishes a limited amount of operations related to derivative contracts for financial entities in relation to their equity in order to regulate their total exposure and guarantee a diversified investment portfolio.

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What are common types of derivatives?

Derivative contracts are executed in Peru for a range of reasons including hedging, trading and speculation.

All of the main types of derivative contracts are widely used in Peru:

- forwards;
- futures;
- swaps (such as interest rate or currency swaps); and
- options (call options and put options).

The value of the derivative contracts is based on the value of the underlying assets.

The main classes of underlying assets seen in Peru are:

- equity;
- fixed income instruments;
- commodities;
- foreign exchange; and
- credit events.

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Are there any other notable risks or issues around entering into derivatives contracts?

Considering that the market for derivative contracts in Peru is limited and that there is no regulation applicable to that type of operation, no notable risks are apparent other than the limitations established by the Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS) in relation to the level of exposure from authorized financial companies.

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Debt finance

Lending and borrowing

Are there any restrictions on lending and borrowing?

Lending

Lending is only a regulated activity if it is conducted using public money (defined as deposits obtained from individuals). Under these circumstances, a lender will need to be authorized by the Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS) to conduct such business.

Financial operations conducted using public money are subject to a range of regulatory requirements that do not apply to unregulated loans. For example, for regulated mortgage contracts, there are particular regulations relating to the provisions of corresponding loan agreements, including the amount to be lent and the total exposure that banks and financial entities should have for these types of loans.

Additionally, regulated credit agreements have specific requirements regarding drafting and forms and the information to be included therein.

In relation to the interest rates, through Circular Letter 018-2019-BCRP, the Central Reserve Bank of Peru established that financial system operations are determined by free competition in the financial market.

On the other hand, for individuals and companies that are not part of the financial system, the maximum conventional compensatory interest rate is mandatory as set forth in the Peruvian Civil Code and the Central Reserve Bank of Peru. The maximum conventional compensatory interest rate is established on a daily basis by reference to the average rate of the financial system for credits to be granted to small-companies (*microempresas*).

There are no additional restrictions applying to foreign lenders making loans to Peruvian borrowers.

Borrowing

While borrowers are generally not regulated, it is advisable for borrowers to consider whether either the mortgage or consumer lending regimes apply to their activities, in which case they will benefit from the above-mentioned protections.

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What are common lending structures?

Lending in Peru may be structured in a number of different ways to include a variety of features and conditions depending on the commercial needs of the parties.

A loan may either be provided on a bilateral basis (a single lender providing the entire facility) or a syndicated basis (multiple lenders each providing parts of the overall facility).

Syndicated facilities by their nature involve more parties (such as agents and trustees which fulfil certain roles for the finance parties), are more highly structured and involve more complex documentation. Larger financings will typically be done on a syndicated basis with one of the syndicate taking the lead in coordinating and arranging the financing.

Loans will be structured to achieve specific objectives, eg term loans, working capital loans, equity bridge facilities, project facilities and letter of credit facilities.

Loan durations

The duration of a loan may also vary between:

- a term loan, provided for an agreed period of time but with a short availability period;
- a revolving loan, provided for an agreed period of time with an availability period that extends nearer to maturity of the loan and which may be redrawn if repaid; or
- an overdraft, provided on a short-term basis to solve short-term cash flow issues.

Loan security

A loan may either be secured, unsecured or guaranteed. These conditions depend on the risk profile of the borrower and the total amount to be lent, and the exposure of the effective equity of the lender, among others.

Loan commitment

A loan may also be:

- committed, meaning that the lender is obliged to provide the loan if certain conditions are fulfilled; or
- uncommitted, meaning that the lender has discretion whether or not to provide the loan.

Loan repayment

A loan may also be repayable on demand, on an amortizing basis (in instalments over the loan life) or scheduled (usually meaning the loan is repayable in full at maturity).

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What are the differences between lending to institutional / professional or other borrowers?

Lending to institutional/professional borrowers is subject to less regulatory supervision and so less burdensome from a compliance perspective.

By contrast, lending in the context of mortgages and to consumers is a regulated activity. Standard contracts and loan documents forms must be previously approved by the SBS.

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Do the laws recognize the principles of agency and trusts?

Peruvian law does not have any specific provisions about agency. Thus, any agency undertaken with Peruvian entities is governed by the provisions of any contract entered into between the parties.

Trust principles are recognized as a matter of Peruvian law and have specific regulations. For instance, it is possible to appoint a trustee (which must be subject to the supervision of the Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS)) to hold rights and other assets on trust for lenders or secured parties.

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Are there any other notable risks or issues around lending?

Generally

Loan agreements and other finance documents are subject to general contractual principles. In addition, regulated companies are obliged to provide their clients, specially when they qualify as consumers, full and easy-to-understand information regarding the main conditions of the loans and credit facilities to be granted, being subject to penalties if those obligations are not fulfilled.

The administrative authorities in charge of attending consumers' complaints are the National Institute for the Defense of Free Competition and the Protection of Intellectual Property Rights (INDECOPI) and the Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS).

Specific types of lending

There are different types of lending available depending on the purpose for which the money is borrowed and the characteristics of the debtor. According to prudential regulations, specifically the Regulations for the Assessment and Rating of the Debtor and the Requirement of Provisions (*Reglamento para la Evaluación y Clasificación del Deudor y la Exigencia de Provisiones*), Resolution SBS 11356-2008, the types of credit granted by financial companies are:

- corporate credit;
- credit to large, medium, small and micro companies;
- revolving consumer credit;
- non-revolving consumer credit; and
- mortgage credit.

Standard form documentation

Standard form contracts for users of the financial system who qualify as consumers must be approved by the SBS and must comply with the requirements provided for under the [Consumer Protection and Defense Code \(Código de Protección y Defensa del Consumidor\) – Law 29571](#) and the Regulations on Market Conduct Assessment of the Financial System (*Reglamento de Gestión de Conducta de Mercado del*

Sistema Financiero) – Resolution SBS 3274-2017. Moreover, companies are obliged to provide their clients with information that is easy to process and understand regarding the most relevant conditions of the loan to be granted (including the term of the loan, annual effective interest cost rates (which includes interest rate and all expenses and fees related to the loan within a year), and penalties, among others).

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Are there any other notable risks or issues around borrowing?

As mentioned before, it is advisable for borrowers to consider if the lending regimes apply to their activities in order to determine if certain benefits of protection are applicable to them.

In addition, borrowers, before entering into loan agreements, should be aware of the potential implications of the occurrence of events of default and the consequences expressly established in the loan agreement (such as prepayment of all amounts that were lent and penalties to be applied).

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Giving and taking guarantees and security

Are there any restrictions on giving and taking guarantees and security?

Some of the key areas affecting the giving of guarantees and security are as follows.

Capacity

It is important to check the constitutional documents of a company giving a guarantee or security to ensure it has an express or ancillary power to do so and there are no restrictions on the directors' or attorneys'-in-fact powers that would be preventative. Under Peruvian law, directors have a general duty to promote the success of the company for the benefit of its members as whole. Directors will need to be able to show that adequate corporate benefit is derived from the company giving the guarantee or security. A safe approach is often to have the shareholders or authorized members of the company approve the giving of the guarantee or security by resolution.

Insolvency

Guarantees and security may be at risk of being set aside under Peruvian insolvency and bankruptcy laws if the guarantee or security was granted by a company within a certain period of time prior to the onset of insolvency. This would be the case if the company giving the guarantee or security received considerably less consideration, and as such, the transaction was at an undervalue. For such a transaction to be set aside, certain statutory criteria would have to be met, including that the guarantee or security was given within one year of the onset of insolvency of the affected party. Guarantees and security may also be challenged on other grounds relating to insolvency.

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What are common types of guarantees and security?

Common forms of guarantees

Guarantees can take a number of forms under the Peruvian law with a majority of them having a payment guarantee nature, covering the payment of money (compensation, penalties, and reimbursement) and other contractual obligations.

Common forms of securities

There are four basic types of security interests that can be created under Peruvian law:

- a pledge (*garantía mobiliaria*);
- a charge;

- a mortgage; and
- a guarantee trust.

Different types of securities are suitable for securing different types of assets.

Under Peruvian law it is possible to grant security over all the assets of a Peruvian company or individual assets. Granting security over all of a company's assets will tend to be achieved by way of a debenture which will include:

- a mortgage over real estate;
- a fixed charge over assets which are identifiable and can be controlled by the creditors (such as equipment);
- a floating charge over fluctuating and less identifiable assets (such as stock); and
- an assignment by way of charge over receivables and contracts.

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Are there any other notable risks or issues around giving and taking guarantees and security?

Granting or taking guarantees

To be valid, a guarantee needs to be in writing, signed by the guarantor and provided for good consideration.

Consideration for a guarantee is subject to general contractual principles. In the case of a guarantee, the underlying obligations are usually the consideration for the guarantee and so it is advisable to execute the guarantee at the same time as executing the underlying obligations to avoid any suggestion of past consideration. Often the guarantee is included in the loan agreement and so this should not be an issue. Also, it can be difficult to establish consideration for a guarantee as the primary obligations are between the underlying obligor and beneficiary, for example between the borrower and lender. As a result, guarantees are often executed as deeds to avoid any argument about whether good consideration was provided. Deeds have particular execution requirements under Peruvian law which need to be observed.

Additionally, there is a risk that a guarantee may be set aside if it was procured by undue influence by a borrower or lender. A party being provided with a guarantee should be aware of this issue and take all necessary actions to avoid claims of undue influence by, for example, requiring the guarantor to take separate legal advice.

Granting or taking security

A security instrument may need to be executed as a public deed (*escritura pública*) if it:

- contains a mortgage over land or any other assets specified as fixed assets under the Peruvian Civil Code;
- confers a statutory power of sale and power to appoint a receiver; or
- contains a power of attorney.

Once granted, security needs to be properly perfected before it is valid against third parties. Perfection formalities can include having the secured asset delivered to the security holder and registration of the security in the Peruvian Public Registry Office, depending on the type of security granted.

Mortgages are required to be notarized and registered in the Peruvian Public Registry Office to be valid and enforceable.

Like guarantees, for a period after a new security interest has been granted (known as the hardening period), it is at risk of being set aside in certain circumstances under insolvency laws.

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Financial regulation

Law and regulation

What are the main laws and regulations that apply to entities that are involved in finance and investments generally?

Generally

The General Act of the Financial and Insurance Systems and Internal Organization Act of the Superintendence of Banking and Insurance (*Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros*) – Law 26702

The Securities Act (*Ley del Mercado de Valores*) – Supreme Decree 093-2002-EF

Regulations on the Initial Public Offering of Marketable Securities (*Reglamento de Oferta Pública Primaria y de Venta de Valores Mobiliarios*) – Resolution SMV 141-1998-EF/94.10

Consumer credit

The Consumer Protection and Defense Code (*Código de Protección y Defensa del Consumidor*) – Law 29571

Regulations on Market Conduct Assessment of the Financial System (*Reglamento de Gestión de Conducta de Mercado del Sistema Financiero*) – Resolution SBS 3274-2017

The Supplemented Act on Consumer Protection in Financial Service Matters (*Ley Complementaria a la Ley de Protección al Consumidor en Materia de Servicios Financieros*) – Law 28587

Mortgages

The Peruvian Civil Code (*Código Civil Peruano*) – Legislative Decree 295

The General Security Interest Act (*Ley de la Garantía Mobiliaria*) – Law 28677

Corporations

The General Business Corporations' Act (*Ley General de Sociedades*) – Law 26887

Regulations of the Registry of Companies (*Reglamento del Registro de Sociedades*) – Resolution 200-2001-SUNARP-SN

Funds and platforms

The Investment Funds and their Management Companies Act (*Ley de Fondos de Inversión y sus Sociedades Administradoras*) – Legislative Decree 862

Regulations on Investment Funds and their Management Companies Act (*Reglamento de Fondos de Inversión y sus Sociedades Administradoras*) – Resolution SMV 029-2014-SMV/01

Regulations on Mutual Funds and their Management Companies Act (*Reglamento de Fondos Mutuos de Inversión de Valores y sus Sociedades Administradoras*) – Resolution Conasev 068-2010-SMV/01

The Collective Fund Act (*A las Empresas Administradoras de Fondos Colectivos contralará SMV*) – Executive Order 21907

Regulations on the Collective Funds System and their Management Companies (*Reglamento del Sistema de Fondos Colectivos y de sus Sociedades Administradoras*) – Resolution SMV 020-2014-SMV/01

Other key market legislation

The General Bankruptcy System Act (*Ley General del Sistema Concursal*) – Law 27809

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Regulatory authorization

Who are the regulators?

The Superintendence of Banking, Insurance and Private Pension Fund Management Companies (*Superintendencia de Banca, Seguros y AFP*, or SBS) is a constitutionally autonomous institution in charge of the regulation and supervision of the financial, insurance and private pension fund system in Peru and the companies that are part of it, being the conduct regulator for firms and companies providing banking and financial services. It enjoys functional, administrative and economic independence.

The Superintendence of Securities Market (*Superintendencia del Mercado de Valores*, or SMV) is a specialized technical entity attached to the Ministry of Economy and Finance whose purpose is to protect investors, ensuring the efficiency and transparency of the markets under its supervision, as well as of the correct firm pricing and the dissemination of the necessary information for such purposes, through its regulatory, supervisory and promotional functions. It enjoys functional, administrative, economic, technical and budgetary independence.

Both Peruvian institutions are entitled to initiate administrative and sanctioning procedures against entities that are under their supervision and, when applicable, apply sanctions that include warnings, economic fines and revocation of licenses.

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What are the authorization requirements and process?

Any company which intends to provide banking and/or financial services must apply to the Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS) for:

- authorization for the organization of the company; and
- authorization for the operation of the company.

The procedure and requirements are regulated by the [General Act of the Financial and Insurance Systems and Internal Organization Act of the Superintendence of Banking and Insurance](#) (*Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros*) and the Regulations for the Incorporation, Reorganization and Establishment of Companies and Representatives of the Financial and Insurance Systems (*Reglamento para la Constitución, Reorganización y Establecimiento de Empresas y Representantes de los Sistemas Financiero y de Seguros*), enacted by Resolution SBS 10440-2008.

The SBS will assess whether the application meets the required threshold conditions within:

- 180 calendar days from the submission of the complete application for the establishment, authorization; and
- 220 calendar days from the submission of the complete application for the operating permit.

For authorizations requested by banks or financial firms or investment banks, the opinion of the Central Reserve Bank of Peru is required.

On the other hand, any company with the intention of participating in operations conducted and executed in the securities market, such as brokerage firms, stock exchanges, securities clearing, securitization companies, mutual fund management companies, investment fund management companies or collective fund management companies must apply to Superintendence of Securities Market (*Superintendencia del Mercado de Valores*, or SMV) for:

- authorization for the organization of the company, and
- authorization for the operation of the company.

The procedure and requirements are established based on the type of entity to be incorporated or the services to be provided.

In both cases, individuals and legal companies applying as organizers must demonstrate moral integrity and financial capacity. Board and management members must demonstrate the required technical ability for the running of the company.

There are no application fees for the submission and assessment of the applications submitted before the SBS. For any authorization to be granted by the SMV, an application fee of PEN 3,850 (equivalent to approximately US\$1,140) must be paid for each procedure.

Authorized firms and individuals are listed on the SBS' and SMV's websites.

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What are the main ongoing compliance requirements?

Many threshold conditions (such as having adequate financial resources, a minimum capital stock and compliance arrangements in place) are also ongoing compliance requirements for authorized firms.

These include:

- minimum capital and equity capital (basic equity and supplementary capital) requirements;
- risk concentration limits, which are based on a firm's equity capital global limits (these limits are overall limits, global limits for operations, individual limits, related individuals exposures and foreign companies and corporate group exposures);
- general and specific provisions for loans granted according to a firm's level of risk; and
- functions (companies must have at least an audit unit, a risk unit, an anti-money laundering system, a market conduct officer and a law compliance officer).

Failure to comply with the threshold conditions and more detailed regulatory rules allow the Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS), in addition to imposing the applicable sanctions, to directly supervise the operation of the relevant firm and to request financial and internal information in order to determine if the failure to comply will be resolved. If the situation has not been resolved within the period of time given to the relevant entity, the SBS is entitled to intervene in the administration of the company and, when necessary, to initiate its dissolution and liquidation.

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What are the penalties for failure to be authorized?

An individual or company undertaking a regulated activity without being authorized is a criminal offence, punishable with imprisonment and further monetary penalties.

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Regulated activities

What finance and investment activities require authorization?

Generally

An individual or company must not carry on any regulated activity in Peru unless authorized or exempted (known as the general prohibition).

A financial or banking activity requires regulatory authorization to carry out specific activities in Peru where such activities do not fall within any of the available exemptions.

- Specific activities include activities such as accepting deposits; dealing in, managing, arranging and advising on investments; and establishing collective investment schemes.
- Specific investments include deposits, shares, debt instruments, options, futures, units in collective investment schemes, and government and public securities.

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Are there any possible exemptions?

In accordance with Article 87 of the Political Constitution of Peru, the Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS) authorizes, supervises and controls the activities of all banks, financial firms, insurance companies and any other firms that receive money from the public.

Credit Unions (*cooperativas de ahorro y crédito no autorizadas para captar recursos del público*) which can receive deposits and grant loans from/to their members do not need for a business license; nevertheless, they must register in the National Credit Unions Registry conducted by the SBS.

Without prejudice to the foregoing, unless otherwise expressly provided for by a special law, agreements relating to private financial and investment activities that do not involve public money can be executed without permit or authorization, in addition to other activities that may be excepted for having a different nature, such as making introductions (that is, making arrangements under which clients can, under certain circumstances, be introduced to another person).

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Do any exchange controls or other restrictions on payments apply?

Peru has implemented no foreign exchange controls.

The exchange rate policy in Peru may be defined as a floating rate with the possibility of Central Reserve Bank of Peru intervening in the market in order to preserve monetary stability. Consequently, the exchange rate between currencies is free and can be established by any private entity for any purpose without the Central Reserve Bank of Peru or other institution intervening in it.

The Political Constitution of Peru guarantees the free possession and disposal of foreign currency.

In case of money transferring from non-Peruvian firms, imports of foreign currency may need to be declared in the customs declarations for their transfer in and out of the country.

There may also be anti-money laundering, anti-terrorism financing and tax considerations to be taken into account.

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What are the rules around financial promotions?

According to the [Stock Market Promotion Act – Law 30050](#), every advertisement or offer made in Peru, to buy or sell or subscribe securities through mass media such as newspapers, magazines, radio, television, mail, meetings, social networking, internet servers located in Peru or other media or technology platforms, may only be done by companies authorized by the Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS) or the Superintendence of Securities Market (SMV).

There are specific promotion rules for specific financial products such as:

- consumer credit as provided for in the Regulations on Regulations on Market Conduct Assessment of the Financial System (*Reglamento de Gestión de Conducta de Mercado del Sistema Financiero*) – Resolution SBS 3274-2017;
- mutual funds referred to in Resolution Conasev 068-2010-EF/91.10 (*Reglamento de Fondos Mutuos y sus Sociedades Administradoras*);
- investments funds as referred to in Resolution SMV 029-2014-SMV/01 (*Reglamento de Fondos de Inversión y sus Sociedades Administradoras*); and
- collective funds as referred to in Resolution SMV 20-2014-SMV/01 (*Reglamento del Sistema de Fondos Colectivos y de sus Empresas Administradoras*).

Promotion rules broadly relate to the obligation of including or not including certain information in the promotion materials relating to financial products.

Additionally, any promotion – including financial promotions – must follow publicity rules that are set out in the [Unfair Competition Act \(Ley de Represión de la Competencia Desleal\) – Legislative Decree 1044](#). Any promotion infraction may be punished by by the National Institute for the Defense of Free Competition and the Protection of Intellectual Property Rights (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual*) - INDECOPI, which is the national promotion and consumer protection authority.

Entity establishment

What types of legal entity are generally used to undertake financial or investment activity?

Generally

The applicable law establishes that, unless express exceptions apply, banks and financial entities must be established as corporations (*sociedades anónimas*) with separate legal existence and limited liability for their members.

Corporations may either be privately held (denoted by the suffix *sociedad anónima* or SA) or publicly held (denoted by the suffix *sociedad anónima abierta* or SAA) depending on whether their shares are listed in the stock exchange.

Shareholders' liability may be limited by shares, in which case they are liable to pay for their shares but not for the company's debts, or by guarantee, where they are also liable to pay a certain amount if the company is wound up.

Funds

An investment fund is an independent autonomous entity made up by the contributions of individuals and legal entities to be invested in instruments, financial operations and other assets depending on the type of fund under management by a fund manager for the account of and at the risk of the fund shareholders.

The four types of types of funds commonly established in Peru are:

- private pension funds administrated by private pension fund management companies (contributions of individuals are made for investments in authorized securities for the individuals' retirement pension);
- investment funds administered by investment fund management companies (contributions are made by a closed group for making investments in anything of their interest – investment fund management companies whose funds only issue trust certificates which are not to be placed through public offerings are not supervised by the Superintendence of Securities Market (SMV) and consequently are not subject to heavy regulation);
- mutual funds administrated by mutual fund management companies (contributions are made by an open group for making investments in securities); and
- collective funds administrated by collective fund management companies (periodical contributions of individuals or companies are made for acquiring goods or services of the interests of a group).

Fund Management Companies, on the other hand, tend to be set up as corporations (generally limited by shares) and must be authorized by the SMV or, in case of the Private Pension Fund Management Companies, by the Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS).

Is it possible to conduct lending or investment business through a branch or establishment?

Yes, it is.

Legally, a company can conduct lending or investment business in Peru through an establishment (also known as a 'branch'). The procedure for a company to request a license to operate a branch in Peru is regulated in Section 18 of Resolution SBS 10440-2008.

Foreign companies having a Peruvian establishment need to comply with the procedures for establishing a banking or financial entity, and are obliged to request an authorization from the SBS and, when applicable, the Central Reserve Bank of Peru. However, the supervision model of the SBS has been primarily developed to control and supervise subsidiaries but not branches. To date, there are no branches of foreign banking or financial institutions operating in Peru.

Unless otherwise expressly provided for by specific laws or an international convention, foreign companies carrying on a trade in Peru through a 'permanent establishment' will be subject to Peru's corporation tax.

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FinTech

FinTech products and uses

What are the most common technology products and FinTech applications used or being developed in the finance and investment marketplace?

Peer-to-peer funding platforms and marketplace lending

There is no strict definition for marketplace lending, given that specific regulations on this matter do not exist in Peru. Usual market practice includes companies lending money with their own capital and companies connecting investors and borrowers through a platform (either with or without knowing the identity of the applicant requiring financing). Marketplace lending is available to address mainly personal loans and is becoming available for small companies. Additionally, citizens may employ FinTech lending products available worldwide that accept Peruvian citizens.

As marketplace lending is just starting its development in the country and many projects are being developed, it is likely that the volume of lending in personal loans as well as further and additional product areas will significantly increase over the coming years.

Blockchain, smart contracts and cryptocurrencies

WHAT IS BLOCKCHAIN?

Blockchain provides a new approach to holding and authenticating data. It is a database operating through distributed ledger technology in which data is recorded on computers, by way of a peer-to-peer mechanism, based on pre-agreed consensus algorithms in the applicable participating network. It is a form of database where data is stored in the chain in either fixed structures called 'blocks' or algorithm functions called 'hashes'.

Each block includes unique features such as its unique block reference number, the time the block was created and a link back to the previous block. Each block is reviewed by a number of nodes and the block is only added to the database if the node reaches consensus that the block only contains valid transactions. Content includes digital assets and instructions which reflect the transactions and parties to those transactions. The ability to track previous blocks in the chain makes it possible to identify transactions back to the first ever transaction completed, enabling parties to verify and establish the authenticity of the assets in the latest block. This makes blockchain exceptionally accurate and secure.

Specialist users on the system apply advanced computing software to identify time stamped blocks, verify the accuracy of the blocks using sophisticated algorithms and add the verified blocks to the chain. As the number of participants increases, the replication of the data over a wider base makes it harder for any person to alter the data in the chain. Any attempted addition or modification to the information on a block needs to be approved by all users in the network and verification of any block can only happen through a 'proof of work' process. This process requires vast amounts of computing power, making it practically impossible to insert fake transactions into a block.

As a result, the data is identified and authenticated in near real-time, providing a permanent and incorruptible database sufficiently robust to operate as a store of value (eg in the case of cryptocurrencies such as bitcoin) or providing an indisputable record for example relating to securities transfer.

Blockchain is a decentralized system, created and maintained by users of the network rather than being dependent on any central or third-party intermediary. It may be public and open ('permissionless' or 'unpermissioned') or structured within a private group ('permissioned').

Permissionless blockchains include bitcoin and ethereum, in which anyone can set up a node that, once authorized can validate, observe and submit transactions. The identities of the participants are not known (other than the unique and random identities known as an 'address'). Permissioned ledgers restrict participation in the network and only the specific participants are given access and are known within the network. The network is private, and only organizations that have been authorized can participate and view transactions.

At the time of writing, there is only one Peruvian company that operates using the blockchain platform to exchange cryptocurrencies, specifically bitcoins, from dollars or soles; however, Peruvian citizens can operate cryptocurrencies through platforms that accept them. Therefore, it is not common for commercial establishments to accept cryptocurrencies as payment method.

WHAT ARE SMART CONTRACTS AND DECENTRALIZED AUTONOMOUS ORGANIZATIONS (DAOS)?

Developments in blockchain are also providing an ability to transfer and rely on instructions verified within the electronic system in the form of so called 'smart contracts'. These contracts have been converted into code and are then executed and enforced by the blockchain network on the occurrence of an event. This reduces the need for intermediaries to collect, store and act on communicated information.

Smart contracts are essentially pre-written computer codes which are stored and replicated on distributed ledger platforms such as blockchain. Execution takes place over the network, eliminating the need for intermediary parties to confirm the transaction, leading to self-executing contractual provisions. These contracts can be as simple as moving a balance from one account to another or advanced more-complex interactions with the outside world using so called 'Oracles'. With Oracles the contract code consults with a service outside of the blockchain network to make a decision. This may entail receiving a confirmation that an event has occurred, such as payment, which automatically executes a further step in the contract, such as the transfer of an asset, which might be in digital form or by delivering instructions to a person or warehouse to release the asset for delivery.

DAOs are essentially online, digital entities that operate through the implementation of pre-coded rules. These entities often need minimal to zero input into their operation and they are used to execute smart contracts, recording activity on the blockchain. DAOs can be particularly challenging to regulate, depending on their software engine, the nature of transactions they are completing or other unique features. Questions of ownership and responsibility for resulting acts of DAOs can also be brought to question if any technical issues arise with their operation.

WHAT IS A CRYPTOCURRENCY?

There is no legal definition of cryptocurrencies in Peru. The exchange of cryptocurrencies is not regulated by Peruvian laws but it may be considered as a foreign currency that may not be limited since the free possession and disposal of foreign currency is guaranteed by the Peruvian Political Constitution. The oldest and best-known cryptocurrency is bitcoin (itself based on the bitcoin platform) although many other cryptocurrencies now exist. For example, the most widely known alternatives to bitcoin include ether based on the ethereum platform and litecoin (these cryptocurrencies are now actively traded with a large developing infrastructure for holding, pricing and exchanging currency).

Initial coin offerings and token-based products

WHAT IS AN INITIAL COIN OFFERING (ICO)?

ICOs are a form of digital currency or token using blockchain technology. ICOs are often a means by which funds are raised for a new blockchain or cryptocurrency venture (the market for ICOs is currently booming). ICOs come in a wide variety of forms and may be used for a wide range of purposes. Some forms of ICOs may be directed at customers or suppliers as a form of loyalty program or a form of access or purchasing power (preferential or otherwise) in respect of assets of the issuer's business. Other forms may be more focused on raising initial funding. It is essential to examine the legal and regulatory basis for any ICO as an unauthorized offering of securities is illegal and may result in criminal sanctions in a number of jurisdictions. Legal analysis of the underlying token will determine if it should be treated as a specified investment or form of regulated security or is more appropriately a form of asset that is not itself subject to the regulatory regime.

Typical attributes provided by tokens will include:

- access to the assets or features of a particular project;

- the ability to earn rewards for various forms of participation on the platform; and
- prospective return on the investment.

Key aspects to consider will include the:

- availability and limitations on the total amount of the tokens;
- decision-making process in relation to the rules or ability to change the rules of the scheme;
- nature of the project to which the tokens relate;
- technical milestones applicable to the project;
- basis and security of underlying technology;
- amount of coin or token that is reserved or available to the issuer and its sponsors and the basis of existing rights;
- quality and experience of management; and
- compliance with law and all regulatory requirements.

The nature of the business and the purpose and structure of the token offering will typically be set out in a white paper available to potential purchasers.

To our knowledge, there have not been any ICOs led out of Peru at the time of writing.

Electronic money

Law 29985 regulates a range of matters, including the issuance of e-money. Electronic money is a monetary value represented through an enforceable credit to its issuer for the same amount of the money received, which is stored in an electronic medium, allowing the user to carry out payments without using cash or credit cards. According to Law 29985, issuers may rely on financial institutions, such as banks or other financial companies authorized by the Superintendence of Banking, Insurance and Private Pension Fund Management Companies to carry out such activity or use specialized companies for issuing money. The purpose of this product is to be an instrument for financial inclusion for people who would not otherwise have access to alternative financial products, so that they may pay by means other than cash (which is the most common payment method in Peru).

Artificial intelligence, robo advisory systems and auction systems

Recommender systems include software tools that provide information published and provided by traditional financial institutions (such as banks, financial entities and fund management companies) to users in order for them to make a decision to acquire financial products that fit their needs. The recommender systems available do not analyze personal data; therefore, they are not suitable for financial products that consider those parameters to advise in areas such as lending but they are functional for deposit and investment products.

Robo advisory systems which analyze personal data and other values are being developed for acquiring loans and are beginning to operate in the finance marketplace. These systems utilize algorithms relating to a person's historical information and the characteristics of financial products in order to rate the risk profile and display the best offers or products available according to the person's appetite for risk.

Auction systems for financial products such as deposits and loans based on recommender systems and robo advisory systems for deposits and loans also exist in Peru. Through auction systems, the developer of the FinTech application makes alliances with different financial companies so that the latter may give a specific offer to the client suitable to their requirements.

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Are there any restrictions, specific laws, regulations or procedures that apply to FinTech products?

General financial regulatory regime

In Peru, the main applicable regulations are the General Act of the Financial and Insurance Systems and Internal Organization Act of the Superintendence of Banking and Insurance – Law 26702 and the Securities Act – Executive Order 861 which regulate lending and public offering of securities. There is not a specific regulatory regime for FinTech products.

Lending will be considered to be a regulated activity if it is conducted using public money which is defined as funds obtained from individuals. Under these circumstances, a lender will need to be authorized by the Superintendence of Banking, Insurance and Private Pension Fund Management Companies to conduct such business.

A public offering of securities is, on the other hand, a public invitation to one or more individuals or legal entities of the general public, or specific segments thereof, to carry out a legal placement, acquisition or disposal of marketable securities. It is important to highlight that it is not necessary to state that the activity is employing securities; the Superintendence of Securities Market considers that it is enough that the characteristics of the financing fit in the definition of public offering of securities.

Regulations on crowdfunding and peer-to-peer lending

CURRENT SITUATION

There is no specific regulation on crowdfunding and peer-to-peer (P2P) lending. However, this activity may fall within the definition of a public offering of securities making it subject to the general financial regulatory regime.

WARNING FROM THE REGULATOR

The position of the Superintendence of Securities Market is that financing by crowdfunding through securities issuing is a non-authorized activity. Moreover, the Superintendence of Securities Market warns the public against investing through entities that promote crowdfunding through securities as they may not have the required [license](#). The statement extends and applies to initial coin offerings as they follow a similar purpose.

REGULATION PROJECTS

Both public and private sectors recognize the need to enact specific regulation on crowdfunding and P2P lending. Consequently, there have been some initiatives, particularly from the private sector, for implementing an act issued by Congress, appointing the Superintendence of Securities Market as the natural supervisor of these activities. However, it is been discussed if there is a need to have a FinTech regulation in Peru instead of applying the general rules.

Moreover, there is consensus on the fact that FinTech regulations must be flexible enough for promoting FinTech development in Peru.

Regulations on payment services

There are no specific regulations for payment services. It is therefore not in scope of the general financial regulatory regime, and currently no specific authorization from the regulator is required to carry on this activity.

Application of data protection and consumer laws

The Data Protection Act, Law 29733, regulates the processing of personal data within Peru which aims to guarantee the fundamental right to protection of personal data and must be applied by public entities and private companies. Whenever any personal data is processed, it will be regulated by the Data Protection Act and be subject to certain registration and compliance obligations such as:

- registration requirements with the National Registry of Data Protection;
- obtaining consent for processing and treatment of personal data from clients, providers and employees; and
- restrictions on using data for purposes other than those for which personal data was given, amongst others.

Anti-money laundering regulations

The Anti-Money Laundering Act, Law 27693, establishes the obligation for companies, depending on the business activity they perform, to implement an anti-money laundering system which allows them to satisfy certain registration and compliance obligations. Among others included in the list prepared by the Financial Intelligence Unit (which itself is part of the Superintendence of Banking, Insurance and Private Pension Fund Management Companies), companies subject to the anti-money laundering regulations are:

- financial companies;
- credit unions;
- credit and debit card issuers;
- individuals or legal entities engaged in foreign exchange activities;
- brokerage firms, stock exchanges, securities clearing, mutual fund management companies, investment fund management companies, collective fund management companies.

The main obligations within the framework of the anti-money laundering regulations include:

- appointment of an employee as the anti-money laundering compliance officer;
- adoption of internal regulations such as employee manuals;
- implementation of policies in relation to know-your-clients-and-workers requirements;
- implementation of an operations log; and
- reporting of suspicious operations.

However, the specific regulations applicable to a company depends on the entity type; therefore, obligations may vary between different types of companies.

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What type of funding arrangements and incentives are available to FinTech businesses?

Seed investment

Initial investment in FinTech business may be provided by families and friends of the founders through their own capital and other high-net-worth individuals that invest in the FinTech business in return for an equity stake (often known as business angels). Such seed investment is often used to fund the establishment and early growth of the business before larger investment is available. The investing individuals may also provide know-how and expertise to assist in the company's development. The seed investors would typically not require the same controls over the business as, for example, venture capital providers. There are some private initiatives in Peru that aim to link business angels with FinTech businesses.

Venture capital

Venture capital funding is a type of equity investment usually targeted at early-stage FinTech companies with an established business and some trading history. Venture capital provides a viable alternative to traditional lending given that the business is unlikely to have the tangible asset base or long track record needed to attract traditional debt funding from financial institutions.

Corporate venture capital (CVC) is a type of venture capital and involves an equity investment by a corporate fund. The benefit of having a CVC as an investor for a FinTech startup is that the fund is able to share its knowledge and expertise of the FinTech sector with the company and act as an advisor.

An additional funding option is venture debt, which is typically structured as a three-year term loan (or series of loans), which is secured against a company's assets and includes an equity element allowing the debt provider to purchase shares in the company. However, venture debt providers will usually only invest in companies that have already received investment through venture capital. Local investment funds, whose target is venture capital investment, are being developed to fund FinTech businesses that are already developed and need to grow. In addition, overseas funds and other entities are starting to invest in Peruvian FinTech initiatives.

State investment

The Peruvian state has initiatives which provide lending to encourage seed investment for starting businesses and venture capital for business that need to grow through the Production Ministry. Additionally, the National Council of Science, Technology and Technological Innovation (Concytec), which is the government entity engaged in promoting the development of technology, has different funds for financing science and technology.

Bank debt and capital markets funding

Currently, FinTech is considered to be a potentially risky business at an early stage of development. Consequently, banks are not promoting this type of debt in the market. Moreover, as the FinTech sector is not yet advanced in Peru, FinTech companies are unlikely to obtain financing through the capital markets. Nevertheless, as the FinTech business consolidates in the country, it is expected that its funding would diversify.

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Portfolio sales

Loan transfers and portfolio sales

What are common ways of buying and selling loans?

Buying and selling loans is very common in Peru.

A loan may be sold on an individual basis or packaged up with other loans and sold as a portfolio pursuant to overarching terms.

The most common ways of selling loans are through assignment, which may be either a transfer of rights only and not obligations, or a complete transfer of a contractual position (including rights and obligations). Subject to any contractual restrictions, assignment of rights can be executed without the consent of the debtor, while assignment of a contractual position requires the consent of the debtor.

Loan transfers are commonly documented using standard form contracts proposed and negotiated by and between the financial entities. The form and content of the transfer documentation will depend on the nature of the loan assets being sold.

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What are the main considerations when transferring a loan and related security?

There are a number of issues to consider before transferring a loan or portfolio of loans. These issues are often covered as part of a due diligence exercise by the seller's legal advisors.

Some of the key considerations include:

- **confidentiality** – whether the seller of the loan is allowed to disclose information relating to the loan to a potential purchaser;
- **data protection** – whether there is any personal data or other restricted information in the loan that should not be disclosed to a potential purchaser;
- **lender eligibility** – whether there are any restrictions around the type of entity to which the loan can be transferred;
- **undrawn commitments** – whether there are any continuing obligations for further funding or other material obligations on the part of the lender that may fall on the transferee or reduce claims made by the transferee;
- **transfer mechanics** – whether there are any steps that need to be taken to transfer the loan in accordance with its terms; and
- **consent** – whether a transfer requires the consent or notification of any other parties or, if applicable, authorization of the Superintendencia de Banking, Insurance and Private Pension Fund Management Companies (SBS).

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Projects

Financing / investing in energy / infrastructure

To what extent are energy and infrastructure assets publicly or privately owned?

Generally

Private entities are entitled to invest in Peruvian energy and infrastructure projects. Based on the location and the regulatory framework, these projects may be:

- national projects;
- regional projects; and
- local projects.

Furthermore, these projects may be part of different sectors such as energy, aviation, rail, telecommunications, water, roads, waste, transport, education, health and justice/prisons.

Energy

Part of the electricity industries in Peru are privatized, with the generation, transmission, distribution and supply services provided by a number of companies of the private sector. Thus, all transmission activities in Peru are developed by private companies and the generation and distribution assets are owned by different public and private companies.

Regarding the transmission system, the National Interconnected Electrical System (*Sistema Eléctrico Interconectado Nacional*, or SEIN), is in charge of the operation of the transmission network in Peru. This system interconnects most of the transmission lines in three geographical areas (north, central, and southern regions). However, there are also 'isolated' systems, not linked to the SEIN, which cover the rest of the country and are owned by private sector companies.

The private sector finances and delivers most of the required infrastructure but there are a number of government policy mechanisms (adopted through legislation) which are used to promote investment in eligible energy generation technologies. In certain instances, including on major energy infrastructure, projects may be procured by the public sector and depending on the terms of the procurement, the asset may either be publicly or privately owned.

The Ministry of Energy and Mines is the main body with responsibility for regulation of the energy sector in Peru. The relevant regulatory authority responsible for ensuring the quality and efficiency of service provided by private companies in the energy market is the Supervisory Agency for Private Investment in Energy and Mining (*Organismo Supervisor de la Inversión en Energía y Minería*, or OSINERGMIN).

Telecoms infrastructure

The telecommunications networks in Peru have been privatized to a number of private companies which provide telecommunications services. All the companies that provide telecommunications services are heavily regulated by government.

The Ministry of Transport and Communications (MTC) is the main authority of the Peruvian telecommunications sector. It also has responsibility for wireless communications services. Further, the Supervisory Agency for Private Investment in Telecommunications (*Organismo Supervisor de la Inversión Privada en Telecomunicaciones* or OSIPTEL), is the regulatory authority created to ensure the quality and efficiency of service provided in the telecommunications market.

Transport infrastructure

LIGHT RAIL

The only light rail system in Peru is located in Lima. Typically, rail assets (such as trams and associated track) are owned by the national public sector. However, the first light rail system project in Peru has been outsourced to a private sector company which is currently running a concession. The Ministry of Transport and Communications (as the main authority in the sector) has projected the development of more lines in Lima and in other cities thereafter.

HEAVY RAIL

The rail market in Peru involves both public and private entities. The rail assets are owned by local and national public sector but certain elements of rail projects have been outsourced to the private sector, for example, the private sector may operate and maintain rail systems on behalf of the Directorate of Railways. The assets will continue, however, to be owned by the public sector.

The rail sector is regulated by the Directorate of Railways (*Dirección de Ferrocarriles*) which is part of the Ministry of Transport and Communications.

ROADS, BRIDGES AND TUNNELS

A government entity, the General Directorate for Land Transport (*Dirección General de Transporte Terrestre*) is a nationwide agency that operates, maintains and improves the motorways and major roads in Peru and is part of the Ministry of Transport and Communications. The General Directorate for Land Transport receives funding from the government for investment in the strategic road network (including additional road capacity). Local roads in Peru are the responsibility of local authorities. The public sector may outsource the construction, operation and maintenance (sometimes on a project financed basis) of such assets to the private sector. In the case of tolled roads, the private sector has taken on roads/crossings on a full concession basis. It is responsible for the design, build, financing, operation, maintenance and collection of tolls for a number of years with the main revenue stream being the collection of toll revenues from users (rather than any service payments from the public sector). In some cases, the private sector provides toll collection services for a service fee rather than relying on those tolls as its main source of revenue.

AVIATION

Airport infrastructure involves both public and private entities in the Peruvian market, national government ownership and some forms of public-private ownership. All models are regulated by government. The Civil Aeronautical Authority in Peru (*Autoridad Aeronáutica Civil en el Perú*) is the aviation regulator in Peru and is part of the Ministry of Transport and Communications.

PORTS

The ports sector also involves both public and private entities, including local and national government ownership and some forms of public-private ownership. This sector is regulated by government and the National Port Authority in Peru (*Autoridad Nacional Portuaria*), part of the Ministry of Transport and Communications, is the port regulator in Peru.

Other infrastructure

SOCIAL INFRASTRUCTURE (SCHOOLS, HOSPITALS, EMERGENCY SERVICES CENTERS/PRISONS)

Typically, these are owned by the public sector with the private's sector's responsibility being for any or all of the design, build, financing, operation and maintenance of the infrastructure. The majority of social infrastructure assets in Peru are directly financed by the government. Subject to value-for-money considerations, private finance may also be used in the procurement of social infrastructure assets. In relation to some of these specific sectors:

Education

The ownership of a school's infrastructure is owned by the Ministry of Education. The current program for new schools is through the 'National Program of Educational Infrastructure' (*Programa Nacional de Infraestructura Educativa*), delivering schools either through a traditional construction procurement or on a project-financed basis. This program seeks to develop infrastructure on three fronts: (i) high-performance schools (*Escuelas de Alto Rendimiento*), (ii) schools in risk areas (*Escuelas en Riesgo*) and (iii) Institutes of High Technical Education (*Institutos Superiores Técnicos*).

Hospitals

Ownership of hospitals is vested in various public sector bodies that are part of the national government (such as the Ministry of Health of Peru and Social Security System (ESSALUD), or local authorities (such as *Hospitales de la Solidaridad* or Regional Hospitals).

DEFENSE

All defense assets are owned by the public sector.

WASTE

The public sector procures new waste treatment or collection facilities and these are owned by the public sector even if the private sector is responsible for design, build, operation or maintenance of any given facility. Those waste treatments and collection facilities are owned by local authorities, which have competence to regulate all of the activities connected to such facilities. In the past few years, some private initiatives have been proposed to public authorities with regard to waste systems. However, such systems have not been successful due to the lack of clear regulation in connection with waste activities.

WATER

Water and wastewater (sewerage) services in Peru are delivered mostly by public sector companies (water companies) which own the relevant infrastructure assets and are located in each region of the country. For example, *Servicio de Agua Potable y Alcantarillado de Lima* (SEDAPAL) is a public company that provides water and wastewater services in Lima. Nonetheless, the public sector may outsource the construction, operation and maintenance (sometimes on a project financed basis) of such assets to the private sector. The National Sanitation Services Supervisory (SUNASS) is the regulator of the water sector in Peru and its functions are to establish norms, supervise providers, approve tariffs and resolve controversies and complaints, among other responsibilities.

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Are there special rules for investing in energy and infrastructure?

Generally

There is no specific regime governing or restricting investment in energy or infrastructure projects in Peru over and above existing regulation for investors and funders, but a particular proposed investment may be subject to legislative or regulatory control (eg merger control rules in case of energy investments). As regards the planning and implementation of the underlying energy or infrastructure project (in which the investment is to be made), the legal/regulatory position relevant to that project must be considered. For example, a project involving development on land will require planning permission or a development consent order, and a project may require environmental authorizations/permits and/or sector specific regulatory consents or licenses. If a public body (eg a government department, a local authority or a competent ministry of the corresponding sector) is procuring a project using private finance, and the public body is to benefit from central government funding towards the cost, the project will be subject to central government approval. Key sector-specific issues are flagged in the sections below.

Whether an investor can invest will depend on the terms of the procurement of that project if it is a public-sector project and, in respect of an existing/operational project, that will depend on whether there are any contractual restrictions on 'change of control'. This is less of a concern on private sector infrastructure projects although investors would need to consider whether the validity of any licenses /consents/permits would be affected by their acquisition of an interest.

Energy

The energy markets in Peru have a complex system of arrangements between suppliers, generators, transmission and distribution in place, and are heavily regulated. In particular, there are complex arrangements in respect of licensing, subsidies and demand/charging mechanism with suppliers, customers, the Ministry of Energy and Mines, and OSINERGMIN. These arrangements are subject to change /regular updates meaning that investors will need to have a good understanding of the current framework and the potential directions in which the market may move. Investors need to understand how technology changes may impact on the overarching regulatory framework and vice versa.

Investors should also consider whether the acquisition of any interests in the energy sector (at an entity or asset level) would cause any issues with any license conditions or the granting of specific subsidies, particularly, if a breach of those conditions could lead to the revocation of a license/subsidy that might make the potential target less attractive or viable.

Further, investors should consider that obtaining licenses is not enough to guarantee the development of energy projects in certain areas. One major issue is to guarantee the 'Rights of Way' for the projects without generating a social problem by affecting property rights of third parties. In most of the cases getting along with the communities located around the project is as important as obtaining the relevant licenses and permits.

Telecoms infrastructure

There is a complex regulatory environment for this sector including how access and interconnectors (between networks) are regulated under the [Legislative Decree 1019 – Law of Access to Infrastructure of Public Telecommunications Services and Access to Infrastructure regulations \(Decreto Legislativo 1019 – Ley de Acceso a la Infraestructura de los Proveedores Importantes de Servicios Públicos de Telecomunicaciones\)](#) regarding access to infrastructure and how the Ministry of Transportation and Communications grants rights to access private or public land in order to install and maintain essential equipment in, over or under that land. This equipment might be cables sunk beneath the ground or a mobile mast sited on the ground. The Supervisory Authority for Private Investment in Telecommunications (OSIPTEL) is the regulator of the telecommunications sector in Peru and it is responsible for the following: rates applicable to users; competition in the sector; interconnection; quality of the service; settlement of disputes between operators and application of the corresponding penalties; and dealing with complaints from users.

The industry is largely privatized; therefore, investors should consider if any permits/consents/licenses will be affected by their interest.

Transport infrastructure

RAIL

There is a framework to consider in respect of parties' practical and operational involvement in this sector. Key issues for parties seeking to become involved in rail infrastructure include developing an understanding of the regulatory regime for certification for train use and acceptance and user fare regulation. Depending on how an investor wishes to invest in a project (specifically, depending on the type of entity or asset involved), there are varying degrees of difficulty for investors to contend with, particularly when entering into existing projects.

ROADS

In order for a private sector partner to carry out its duties on certain types of roads projects, the procuring public sector authority (Ministry of Transport and Communications or a local authority) may delegate certain of its statutory duties to the private sector partner. This will be dependent on the project and the specific contractual requirements. Any investor will, therefore, need to understand those duties and whether it is able to subcontract those duties to an appropriate person. There is usually a restriction on the change of control of the private sector partner during the construction period. Following the construction period, the relevant private sector partner may be allowed a change of control only with the prior approval of the Ministry of Transport and Communications or local authority. The precise scope of the restrictions will depend on the contractual terms of the project.

Other infrastructure

On publicly procured infrastructure, it is quite common for long-term projects to have a 'change of control' clause which restricts change in ownership structures of the private sector. For example, in most sectors there is a restriction on change in control during the construction period but this is often relaxed post-construction. How strict these restrictions are will often depend on the sector. For example, the defense sector usually gives the Ministry of Defense a strong degree of discretion (particularly on the grounds of national security) as to whether to accept a change in control over its private sector partner.

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What is the applicable procurement process?

Public procurement in Peru is, for the time being, in most instances governed by the Law for Public Procurement and State Contracting. There are some sector-specific regulations such as [Legislative Decree 1224 Public-private partnerships Law \(Decreto Legislativo N° 1224](#)

Ley Marco de Promoción de la Inversión Privada mediante Asociaciones Público Privadas y Proyectos en Activos), applicable to any sector and the *Law of Electric Concessions (Decreto Ley 25844 Ley de Concesiones Eléctricas)*, among others.

The key principles are that contracts procured by the public sector are awarded fairly, transparently and without discrimination on the grounds of nationality and that all potential bidders are treated equally.

Investing in energy and infrastructure

Public procurement is relevant where the Peruvian government, or a branch of it, is seeking to outsource delivery of a new project. On an infrastructure project, a potential investor would have to bid in its own capacity or as part of a consortium to deliver the overall deal which could include design, build, operation, maintenance and financing of the relevant energy or infrastructure asset. The relevant procurement legislation applies to certain public bodies including central government departments, local authorities, police and fire authorities, among others. A regulated procurement is required where certain financial thresholds are met and on most major infrastructure projects (where limited exclusions do not apply), it is likely that those thresholds will be met so a regulated procurement would need to be run.

The general rule is that the public sector needs to follow a public tender. However, it could happen that some projects are generated under unsolicited proposals, which means that a private sector company may propose the development of a project to a public entity. Regarding public tenders, there are different regulations that may be applicable depending on the sector, for example the regulation applicable to electric projects are regulated by different rules to those regulating transportation infrastructure projects.

An investor may choose, however, to seek to invest in a project (by acquiring an interest in a private sector partner) that has already been procured and is operational. Typically, such investments are controlled by contractual mechanisms (particularly on publicly procured projects) within the original awarded contract rather than procurement regulations themselves.

Depending on the structure of the deal, any acquisition of an interest or variation to the existing project may have procurement-related considerations that need to be borne in mind.

Financing energy and infrastructure

On a publicly procured contract, the public sector may have prescribed requirements regarding the funding arrangements. Following entry into the contract, the main tool for controlling the financing is that, typically, on project finance deals, a refinancing of the senior debt will require the consent of the public sector.

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What are the most common forms of funding / investing in energy and infrastructure?

The principal forms of private sector funding/investment in energy and infrastructure in Peru (including in relation to public-private partnerships) include the following.

Funding

- Loans made on a corporate finance basis (balance sheet debt)
- Loans made on a project-finance basis (to a special purpose project company) on medium- to long-term bases – such loans may later be syndicated to other funders (for publicly procured project finance deals, this often means using private finance)
- Bond finance
- Mezzanine debt (in some sectors)
- Refinancing of the debt in operational projects
- Asset financing (this is particularly relevant in the rail sector)

In order to promote private investment in these activities, the Peruvian government has tried to expand the funding base and increase liquidity in the market (particularly by encouraging institutional investors) by various means. These include the Ministry of Economy and Finance of Peru offering financial and non-financial guarantees to assure certain types of debt on infrastructure projects (for example, guaranteeing bond finance debt so as to lower debt pricing to near gilt levels and offering a 'minimum guaranteed income').

Investing

- 'Equity' investment in special purpose vehicles or entities that may have a portfolio of interests, ie share capital and subordinated sponsor loans
- Secondary market investment in operational projects (acquisition of 'equity')

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Restructuring

Enforcement and sanctions

When can there be regulatory investigations?

When the Superintendence of Banking, Insurance and Private Pension Fund Management Companies (SBS) or the Superintendence of Securities Market (SMV) as applicable, considers that an authorized firm or regulated individual may have breached the ongoing compliance requirements, it will launch a formal investigation.

This may result in regulatory and monetary sanctions, in addition to criminal liability for the individuals involved if any criminal offence was committed.

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What regulatory penalties may apply?

When a rule breach has taken place, the authorities may impose a financial penalty or censure, or withdraw regulated status of the firm and/or regulated individuals.

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What criminal penalties may apply?

Following formal investigation, the regulators have powers to impose criminal penalties in certain cases, including:

- insider dealing and misleading statements and practices;
- breaches of the Anti-Money Laundering and Terrorism Financing Regulations;
- conducting regulated activities when not authorized; and
- bribery practices with public officials and private persons.

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Tax

Tax issues

Are stamp, registration, transfer or other similar taxes applicable?

Are there stamp, registration, transfer or other similar taxes payable on the advance, transfer or assignment of a loan?

In general, no stamp, registration, transfer or other similar taxes are payable on the advance, transfer or assignment of a loan.

However, a tax on financial transactions would be applicable in the event that funds are transferred via local bank accounts. The tax is equal to 0.005% of the amount transferred.

Are the stamp, registration, transfer or other similar taxes payable on the taking, transfer or assignment of a mortgage, debenture or other security?

No stamp, registration, transfer or other similar taxes are payable on the taking, transfer or assignment of a mortgage, debenture or other security.

It is advisable to register at the Real Estate Registry the taking, transfer or assignment of mortgages in order to make it enforceable against third parties. An administrative fee is required to be paid when registration of the taking, transfer or assignment of such mortgage takes place. The amount of the fee will depend on the amount of the mortgage.

Are the stamp, registration, transfer or other similar taxes payable on the issue, transfer or assignment of a debt security (eg a bond)?

In general, no stamp, registration or other similar taxes are payable on the issue, transfer or assignment of a debt security.

However, in the case of bonds or other debt securities issued in the context of a public offering, a registration fee on the issue of such bonds/debt securities is required to be paid before the Superintendence of Securities Market (SMV).

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Do tax authorities take priority on enforcement?

On the enforcement of security, do tax authorities take priority over secured lenders or secured debt security holders (eg secured bond holders)?

Tax authorities take priority on enforcement over secured lenders or secured debt security holders.

However, in the context of a bankruptcy proceeding, lenders or debt security holders may take priority over the tax authorities when the loans or the debt securities are supported under a warranty before the entry date of the debtor to such a proceeding.

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Is withholding tax on interest payments applicable?

Is there withholding tax on interest payments under a loan?

Yes. Withholding tax is generally applicable to Peruvian-source interest payments paid by a borrower resident in Peru to a lender which is a legal person not resident in Peru or an individual who is not domiciled in Peru. Such withholding tax applies not just to interest payments but also extends to commissions and any additional amount to the interest agreed in loans, credits or any capital placed or economically used in Peru.

If so:

What is the rate of withholding?

LENDERS AS LEGAL PERSONS

In the case of interest payments to legal persons (ie not individuals) not resident in Peru, the general withholding tax rate is 30%.

However, the rate of withholding may be reduced to a rate of 4.99%, if all of the following requirements are met:

- the interest rate is not higher than LIBOR + 7 points (the excess would be subject to a withholding rate of 30%);
- the entry of the loan capital into Peru is attested in documentation; and

- the financing operation is not performed between related parties (including by way of back-to-back transactions).

In addition, in the case of interest payments to financial institutions a rate of 4.99% will be applied.

LENDERS AS NON-DOMICILED INDIVIDUALS

In the case of interests to individuals not domiciled in Peru, the general withholding tax rate applicable is also 30%.

However, the rate of withholding may also be reduced to 4.99%, if all of the following requirements are met:

- the financing operation is not performed between related parties (including by way of back-to-back transactions); and
- the interest payments are not derived from transactions made from or through tax havens.

What are the key exemptions?

The main exemptions from withholding tax in Peru apply to interest and related payments made on:

- development loans granted directly or indirectly by international organizations or foreign government institutions; and
- government bonds.

An exemption from the application of withholding tax on interest or related payments may be applicable in part, under the terms of a double tax treaty entered into by Peru, provided that the requisite conditions are met.

Would the same analysis apply to interest payments under a debt security (eg a bond)?

Yes, the analysis described above is applicable to both interest payments under a loan or other form of debt security.

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Are foreign lenders and debt security holders subject to tax on interest payments?

Will the lender be taxed on interest payments under a loan in the jurisdiction of the borrower (other than by way of the application of withholding taxes (if any)), assuming the lender is not otherwise resident in that jurisdiction for tax purposes (eg by virtue of incorporation, residence or local branch)?

No.

Would the same analysis apply to interest payments under a debt security (eg a bond)?

Yes.

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