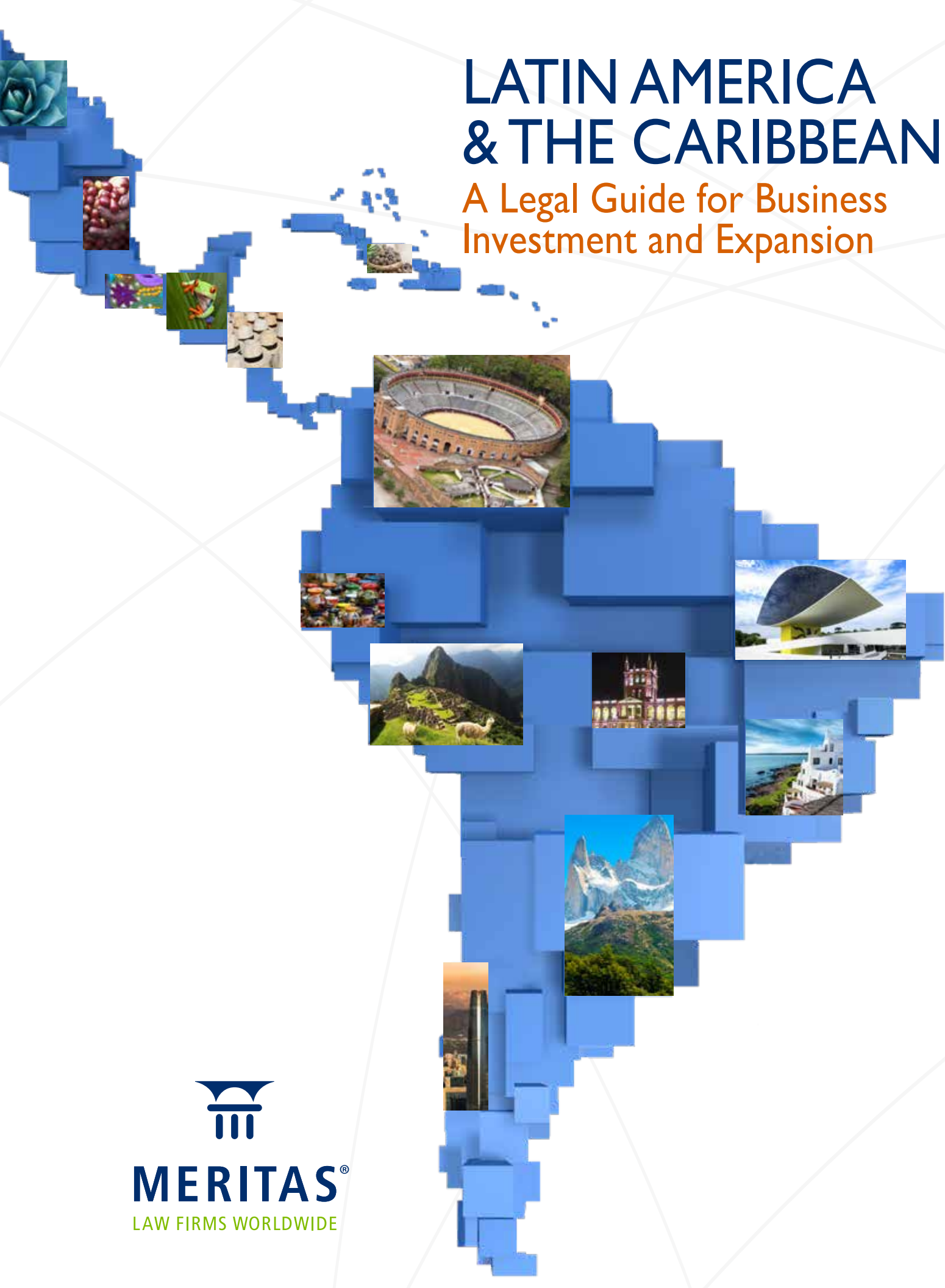


# LATIN AMERICA & THE CARIBBEAN

A Legal Guide for Business  
Investment and Expansion



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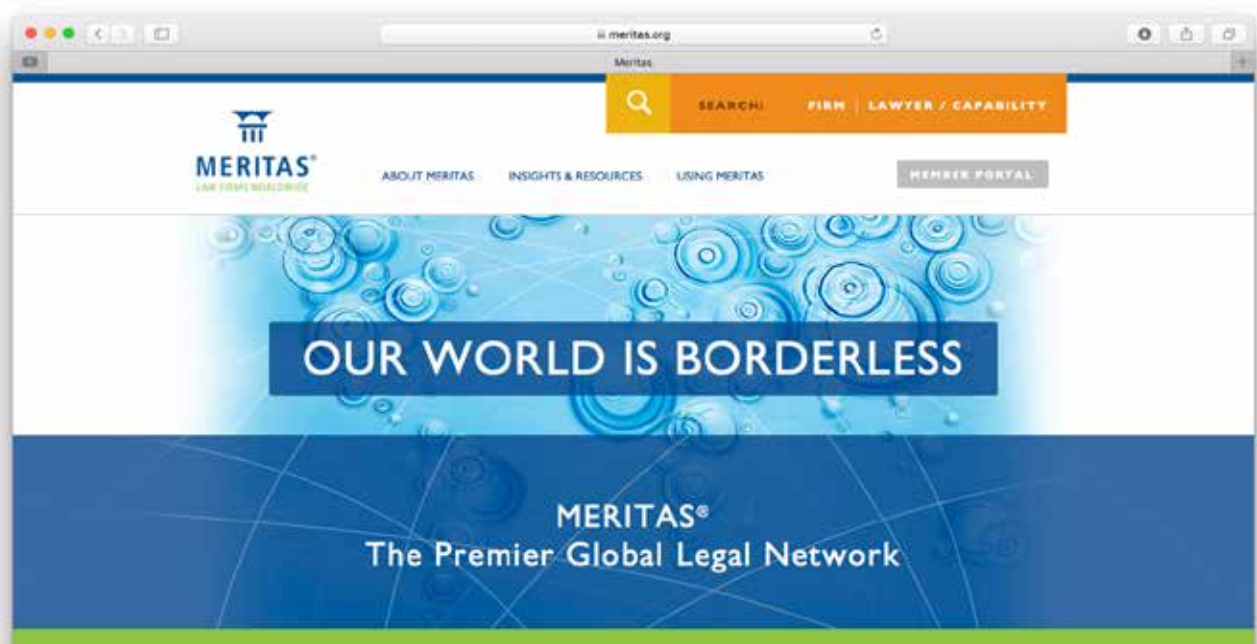
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# PERU

## **FIRM PROFILE: GARCÍA SAYÁN ABOGADOS**

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## 1. What role does the government of Peru play in approving and regulating foreign direct investment?

The Peruvian state promotes and guarantees foreign investments in any kind of activity and entity. Foreign investors have the same rights as local investors, with the exception set forth in the Peruvian Constitution regarding the prohibition to directly or indirectly acquire and/or possess real property within 50 kilometers of the country's boundaries. There are no requirements for prior authorization of foreign investments. No authority, regardless its government level, may apply different treatment to investors based on their nationality, sector, the economic activity in which they participate, or the geographic location of their investments.

The Peruvian government supervises certain industry activities, independently of the nationality of the investor, such as: insurance, financial and banking operations; mining and energy; drug and chemical use; education; public infrastructure; transport and telecommunications; water and sewage services, among others.

## 2. Can foreign investors conduct business in Peru without a local partner? If so, how does the Peruvian government regulate commercial joint ventures between foreign investors and local firms?

Yes, foreign investors may conduct business in Peru in an independent way, without a local partner. Foreign investments are allowed without restrictions in most economic activities, as well as the acquisition of shares owned by national investors. Investors are entitled to organize and develop their activities under any business entity or scheme approved by law.

The General Corporations Law No. 26887 provides, among other forms of business associations, for three forms of stock corporations (known as *sociedades anónimas*): simple corporations (*sociedades anónimas*), open corporations (*sociedad anónimas abiertas*) and closed corporations (*sociedades anónimas cerradas*). Since Law No. 26887 was enacted, the simple and the closed corporations have become the ones most frequently incorporated in Peru.

Foreign investors can also establish a Peruvian branch of their company. The law defines a branch as any division of business at a different location from its main office, created

to perform activities as part of the corporation's purpose. It is not deemed as a separate legal entity of the principal office, but for tax purposes, it is considered an independent taxpayer. The principal office is liable for the branch's obligations. It must have permanent legal representation in Peru and management autonomy to the extent granted by the principal office and according to the powers granted to its representatives.

Also, through consortiums or joint venture agreements (collaboration agreements) two or more parties, which can be foreign, may associate to actively and directly participate in a certain business for the purpose of obtaining an economic profit.

However, each party will maintain its independence at all times. Each party will be individually liable to third parties for the activities that it carries out under these agreements.

When the consortium or joint venture enters into agreements with third parties, there is joint liability for the partners if it is stated in the agreement or when determined by law.

The parties should determine the extent of participation in the results; or otherwise it will be deemed to be equal for all parties.



### 3. What laws influence the relationship between local agents and distributors and foreign companies?

In general, Peru has a free regime for foreign trade. Nevertheless, certain products such as foods, medicines, agrochemicals, and some others require registration previous to import because of sanitary considerations. Certain agricultural products are subject to a price stabilization regime (*franja de precios*), which in case of a fall in the international quotation of these products, creates additional tariffs for imports. The importation of used clothes, used rims, and vehicles that have been in production for more than five years is prohibited.

There are no limitations on the distribution of imported goods. A foreseeable and transparent customs regime exists, which guarantees freedom in foreign trade.

Peru is part of the Andean Community of Nations, and has a free commerce area with Colombia, Ecuador and Bolivia. According to this agreement, Peruvian exports within these three countries are duty-free. At the same time, all imports from the Andean countries could enter Peru duty-free. Peru has very ambitious trade agreements with Chile and with MERCOSUR (Brazil, Argentina, Uruguay and Paraguay). According with said agreements, a very important portion of the trade within Peru and said countries is also duty-free.

In addition, Peru has free trade agreements with the United States of America and with the European Union. According to these Free Trade agreements, almost all Peruvian exports to the USA and the countries of the European Union enter duty-free to said countries. On the other hand, Peru has given immediate duty-free access to the 80% of the American industrial and other exports to Peru. Similar free trade agreements are applicable with Canada, China and Korea.

Peru has signed some agreements with other states for the avoidance of double taxation and prevention of fiscal evasion. A multilateral agreement, Decision No.579, was signed with the Andean Community countries: Bolivia, Colombia, Ecuador, and Peru. According to said Decision, income tax is generally applied only by the country of the source of income. Such agreements also include rules that allow the respective tax administrations to perform joint tax audits and exchange of information.

OECD Model Tax Convention was adopted in the agreements signed with Canada, Chile, Brazil, Mexico, Portugal, Korea and Switzerland. Therefore, they allocate tax jurisdiction between source and income. Capital gains, interest and royalties are subject

to a withholding income tax rate that in some cases may be more beneficial than the tax rate applied in the current regime. These Conventions also affect related parties' transactions and should be applied considering internal transfer pricing regulations.

### 4. How does the Peruvian government regulate proposed merger and acquisition activities by foreign investors and are there any areas of economy where they are prohibited (e.g. natural resources, energy or telecommunications)?

In Peru there is no previous control of mergers, acquisitions and spin offs. However, after the closing, the authority that regulates free competition (INDECOPI) can start a procedure to investigate if the resulted entity or the involved companies are breaching the free competition regulations, being able to impose fines and adopt other kinds of sanctions.

In telecommunication (television broadcasting) foreign investment is not prohibited but the reciprocity principle is applied. In that case, the foreign investor will have the same limitations that a Peruvian investor will have in his country.

## 5. How do labor statutes regulate the treatment of local employees and expatriate workers?

Local and foreign employees are entitled to the same rights and benefits. Nevertheless, foreign employees can be hired for certain positions and up to a three-year term, which can be renewed on the same basis. No more than 20% of the employer's personnel can be foreign and no more than 30% of the total payroll can be used to cover foreigners' salaries. The law provides several exemptions to these restrictions. Labor contracts with foreign employees require the approval of the Labor Department.

In general, local and foreign employees are subject to a three-month trial period, after which they may be fired only based on a just cause regulated by law. Peruvian labor legislation regulates different kinds of employment contracts for starting or increasing a new activity, implementing new technology, covering extraordinary needs of labor, in cases of temporal replacement, covering seasonal labor needs, etc.

In addition to a one-day weekly rest and some holidays (around 12 days in a year), employees are entitled to one month of paid vacation after a year of full employment. Furthermore, one monthly salary is paid in July and another in December as bonuses for Independence Day and Christmas. Profit sharing is based on a scale between 5% and 10% depending on the employer's activity for companies with more than 20 employees. As severance payments, employers must make semi-annual deposits in an employee's special bank account of approximately half a salary per each six months of full employment. Deposits can be withdrawn only upon employees' retirement from employment or before as long as a minimum deposit of four salaries remains until the end of employment. The first two hours of overtime have a surplus of 25%; additional overtime is subject to a 35% surplus. Dismissal of an employee without a just cause is subject to the payment of an indemnity of 1.5 monthly salaries per each year of employment with a 12-month salaries cap. In some cases, reinstatement is applicable.

The minimum wage (currently equivalent to approx. USD260 per month) is applicable to any employee working a full eight-hour day. Minimum wage for jobs performed in a night shift (10:00 p.m. to 6:00 a.m.) has a surplus of 35%.

In addition to income tax, salaries are subject to a withdrawal of 13% for the Public Pension System or approximately 12% for the Private Pension System. Employers must pay, based on the employee's salary, 9% for Health Care Insurance and other special taxes depending on the employer's activity. In addition, employers performing activities considered high risk must provide additional insurance covering health and pension benefits.

## 6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Foreign investors can remit abroad in foreign currency and with no previous authorization of any governmental agency whatsoever the total amount of their investments and the total amount received as dividends.

There is no limitation for having foreign currency in Peru. Almost every bank offers and manages accounts in local currency and US Dollars, as well as in other foreign currencies.

## 7. What types of taxes, duties, and levies should a foreign investor in Peru expect to encounter?

The Peruvian Tax System includes mainly the Income Tax (*Impuesto a la Renta*), the Value Added Tax (*Impuesto General a las Ventas*), the Municipal Improvement Tax (*Impuesto de Promoción Municipal*), the Excise Tax (*Impuesto Selectivo al Consumo*), the Import Duties (*Aranceles*) and other various minor taxes.

### INCOME TAX

Annual tax applicable for individuals and corporations. The individual's incomes are divided into categories depending on the source and are subject to the following rates:

- 8% of the net income up to approximately USD6,136.
- 14% of the net income up to approximately USD24,545.
- 17% of the net income up to approximately USD42,954.
- 20% of the net income up to approximately USD55,227.
- 30% for the excess of the additional net income.

Individuals are also allowed to deduct some expenses as long they are supported in formal invoices up to the amount of USD3,681.

Corporations are subject to a rate of 29.5 % of their net income.

Dividends distribution is subject to a withholding rate of 5%. Corporations that agree to the distribution or effectively distribute dividends and other kinds of profits to individuals and/or non-domiciled corporations are responsible before the Tax Authority for the payment of this tax.

### VALUE-ADDED TAX

This is a general consumer tax applicable to all sales of movable goods and services rendered or used in the country, construction contracts, the first sale of real estate made by the builder, and the importation of goods. Its rate is 16%, which added to the 2% of the municipal improvement tax results in an applicable rate of 18% affecting the price of all sales. The system permits taxpayers to use the tax paid in a previous stage as a tax credit. This tax is paid on a monthly basis.

### EXCISE TAX

Applicable to certain specific luxury goods. The rates vary from 0% to 75%. Fuel is subject to a fixed amount of excise tax.

### IMPORT DUTIES

Applicable to the CIF value of goods imported to Peru. The rate is 12% for most of the goods. Certain goods are subject to a rate of 20%. Some specific goods are temporarily subject to a surtax of 5%.

## 8. How comprehensive are the intellectual property laws of Peru, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

Industrial property rights in Peru are regulated by Decision No.486 of the Andean Community of Nations, a supranational law applicable in Andean Pact countries (Bolivia, Colombia, Ecuador and Peru) and by its own Law Decree No.1075, as well as the international conventions to which Peru is party, like the Paris Convention for the Protection of Industrial

Property, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the Pan American Convention of Washington (1929), Patent Cooperation Treaty (PCT) and Trademark Law Treaty (TLT 1994).

Patents and trademark rights may be acquired only through registration before the Patent and Trademark Industrial Property Office. The Peruvian trademarks system permits the registration of an exclusive right without any use and without any declaration of intent to use.

Patents are valid for a 20-year term from the date on which the application is filed. Trademarks are valid for a 10-year term from the date of the resolution granting the registration and can be renewed indefinitely for 10-year periods.

The Patent and Trademark Industrial Property Office will enforce these laws regardless of the nationality of the parties. Foreigners receive the same treatment as the Peruvians.

## 9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?

Peruvian legislation provides for several procedures with the courts for settlement of disputes available to foreigners as well as to local individuals, corporate bodies or the state. In addition, it also provides non-judiciary mechanisms for the settlement of disputes, such as conciliation, mediation and arbitration procedures.



Disputes with the state can also be submitted to arbitration tribunals established by the treaties to which Peru is party. Peru is a signatory to the ICSID Convention and has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Inter-American Convention of Panama. Peru is also member to the Multi-lateral Investment Guarantee Agency.

The courts and arbitrators in Peru will give the same treatment to a foreign investor as to a local one. In general, the parties can choose the applicable law and the jurisdiction in where they will settle any dispute, considering different factors as the amounts involved, expenses, the urgency of the matter, etc. In some cases, when contracting with the Peruvian government this freedom to choose the applicable law and jurisdiction may be limited.

#### **10. What advice can you provide for how best to negotiate business or conduct business in Peru?**

Even though there are not additional legal requirements in Peru for foreign investors, as in every country, there are legal formalities and requirements that the investors need to know and fulfill to avoid any fines or sanctions. Consequently, it is important that the foreign investors receive advice from lawyers and accountants that can guide them in the whole process. In addition, and depending on the activity to be performed, choosing a bank with international relations and nationwide coverage is also advisable.

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