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Litigation

Peru

Payet, Rey, Cauvi, Pérez Abogados

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Law and Practice

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Payet, Rey, Cauvi, Pérez Abogados is one of the leading law firms in Peru, with extensive experience in dispute prevention, management and resolution. The team specialises in designing procedural strategies to ensure a successful legal defence for clients in domestic judicial processes. It also

handles commercial arbitration, with a recognised track record in representing clients from diverse economic sectors, including telecoms, infrastructure and energy. The firm is also noted for its activity in commercial, construction and investment arbitration.

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1. General

1.1 General Characteristics of Legal System

The Peruvian legal system is based on Civil Law, so is mainly ruled by the Constitution (1993) and legal provisions or written statutes (Laws, Decrees, etc). In particular, in the case of judicial processes, the inquisitorial model is followed by the Peruvian Judiciary.

Even if previous rulings by the Supreme Court may be used as reference, each judge will decide on a case-by-case basis. It is important to highlight that Civil Courts conduct the proceedings mainly through written submissions. In contrast, proceedings before Criminal and Labour Courts have been mainly oral since 2017.

1.2 Structure of Country's Court System

The structure of the Peruvian court is typical for a Civil Law country. There are several provincial courts of justice, integrated by first-level judges whose decision might be reviewed by the superior courts (Appellation Courts) if a motion to appeal is filed opportunistically. Finally, the case may be assumed by the Supreme Court of Justice through a cassation appeal. The cassation appeal is considered as an exceptional mechanism whose main objective is to create relevant jurisprudence for the legal system regarding the interpretation of legal provisions. There are also specific judges depending on the merits or nature of the dispute (commercial judges, labour judges, constitutional judges, etc).

The same scenario applies to constitutional proceedings, but disputes are solved as a last instance by the Constitutional Tribunal.

1.3 Court Filings and Proceedings

Generally, all proceedings before Peruvian courts are public. The Peruvian Judiciary has developed a website where the parties can review the current status of the proceeding and the relevant procedural acts.

There are, however, two specific situations in which proceedings may be considered confidential:

- where precautionary measures are conducted by the *in audita pars* principle (which means that the injunction is granted without previous service to the counterparty); and
- some criminal cases regarding specific issues, such as crimes related to children or private information.

1.4 Legal Representation in Court

Every party has the right to be assisted by a lawyer in a trial. According to Article 132 of the Code of Civil Procedure, every statement or writ submitted to a court must be authorised by a lawyer who belongs to the Peruvian Bar Association. If a lawyer is not a member of the Peruvian Bar Association, he or she cannot appear in trial.

Foreign attorneys cannot appear before the Peruvian Courts as counsels without fulfilling all the administrative and legal requirements for being a member of the Peruvian Bar Association.

ciation. If a party wishes to designate a lawyer for the trial, it should do so in the first writ submitted to the court, according to Article 80 of the Code of Civil Procedure. After that, the counsel may file any writ on behalf of the client, unless the writ is related to a substantial issue, such as a withdrawal of the claim.

It is important to mention that, based on the nature of the dispute, it is possible to file a habeas corpus or habeas data (constitutional proceedings) without the authorisation of an attorney-at-law.

2. Litigation Funding

2.1 Third-party Litigation Funding

There is no specific regulation about third-party funding in litigation, but it is not forbidden. Therefore, if one party seeks funds to support the litigation, the legal relationship will be governed by the provisions of the Peruvian Civil Code, as a typical contractual relationship.

2.2 Third-party Funding of Lawsuits

Since there is no regulation that allows or bans types of claims for third-party funding, all kinds of claims may be funded by third parties.

2.3 Third-party Funding for Plaintiffs and Defendants

Since third party founding will be treated as a typical contractual relationship, both parties may benefit.

2.4 Minimum and Maximum Amounts of Third-party Funding

As a typical contractual relationship, the minimum or maximum amounts for third-party funding would be defined by the agreement of the parties in each case.

2.5 Third-party Funding of Costs

All kind of costs may be involved in a contractual relationship with the purpose of funding litigation.

2.6 Contingency Fees

It is very common for fees agreements regarding litigation matters to contain a contingency fee. For instance, if the dispute relates to a claim for a sum of money, the counsel may agree on a percentage of the amount under dispute.

2.7 Time Limit for Obtaining Third-party Funding

There are no time limits.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

Before resorting to a formal legal proceeding, a preliminary step is required for all processes containing determined and determinable causes of action involving disposable rights of the parties: a non-jurisdictional application must be filed with a Settlement Centre or a Justice of the Peace Professional Court.

The requirements and provisions regulating this pre-trial proceeding are contained in Law 26872 and Supreme Decree No 001-98-JUS. The application must contain – among other things – a clear description of the factual issues of the conflict and the claim.

Although the filing of such an application is mandatory, it does not obligate the parties to reach an agreement. The outcome of the pre-trial proceeding may be a total agreement, a partial agreement or no agreement, or the parties may fail to appear when summoned to a hearing.

It is not necessary to file the application if the summoned party is domiciled abroad.

The summoned party is not required to respond to the application, but the non-attendance of a summoned party invited to the Settlement Hearing produces a relative legal presumption of truth about the facts set forth in the pre-trial proceeding, in the judicial process to be filed.

Once the lawsuit is filed, the Court will review whether the claimant has complied with the pre-trial proceeding.

3.2 Statutes of Limitations

According to the Peruvian Civil Code, the statute of limitation applicable to civil suits varies depending on the civil matter in controversy, as follows:

- ten years for personal actions, property actions, claims born of an executory title and nullity claims;
- seven years for damages resulting for the parties from the violation of a simulated act; and
- two years for annulment actions, the revocation of the debtor's actions to the detriment of his or her creditor, indemnity actions for extra-contractual liability and corresponding actions against the representatives of incapable persons arising from the exercise of the position.

The statute of limitation is triggered from the day on which the legal action can be initiated, and is interrupted by the valid serving of the lawsuit.

3.3 Jurisdictional Requirements for a Defendant

Procedural capacity is understood as the aptitude of any person to be present at a legal process, and to be accountable for

the acts validly performed within it. The Code of Civil Procedure provides that this quality pertains to the following:

- natural persons who exercise their right and those who may use them in the process;
- companies represented by their general manager, representatives, or attorneys, according to their by-laws or the law; and
- any other kind of legal entity that could be entitled by law to be a party in a civil process (ie, a trust).

3.4 Initial Complaint

A jurisdictional process begins with the filing of a lawsuit before the competent court, which should fulfill the requirements established by the law on the matter.

The lawsuit should contain the following:

- the designation of a competent judge;
- the name, identity data, domicile and procedural address of the claimant;
- the name and address of the representative, when appropriate;
- the name and address of the defendant;
- the clear and specific claim;
- the facts supporting the claim;
- the legal grounds;
- the amount of the claim; and
- the correspondent evidence.

The lawsuit should be accompanied by the following:

- a copy of the identity document of the claimant, or of its representative, when appropriate;
- the document containing the power of attorney to initiate the process;
- all the documents and means of proof available; and
- a certified copy of the document issued in the pre-trial proceeding, when appropriate.

Once the lawsuit is filed, the Court will review whether or not it complies with all the requirements of form and substance. If the requirements are met, the lawsuit will be admitted for proceeding. However, if the Judge considers that the lawsuit lacks a formal requirement, the party is granted a term within which to comply. If the Judge considers that the lawsuit lacks a substance requirement, the lawsuit will be rejected from the outset.

3.5 Rules of Service

When a lawsuit is filed, one of the requirements that the claimant must comply with is to detail the defendant's domicile (in Peru or abroad) and to pay a Court fee to execute the serving procedure.

The Court is responsible for the serving procedure, and the rules will depend on whether the domicile of the defendant is in Peru and in the same jurisdiction of the venue of the Court, or is in Peru but in a different jurisdiction of the venue of the Court, or is abroad.

If the defendant's domicile is in the same jurisdiction in which the judicial process takes place, a representative of the Judiciary will go personally to the defendant's domicile, leaving a record of the notification. If the defendant's domicile is in a different jurisdiction, the serving proceeding is done by the competent Court.

When the defendant's domicile is abroad, the service will be done through rogatory letters sent to the Court of the country where the defendant resides, or to the diplomatic or consular representative of Peru within said country.

In the case of uncertain persons or those whose domicile is unknown, the service will be done through a legal notice (an advertisement in a daily newspaper), in which case the party must declare under oath or promise that it made its best efforts to identify the domicile of the defendant. If the statement is proven false or if it is proven that the party could have known it using normal diligence, all proceedings will be annulled, and the Judge will sentence the party to pay a fine.

When appearing before the Court for the first time, the defendant must indicate a procedural and electronic domicile within the jurisdiction of the venue of the Court in which the process is carried out, thereby simplifying the rest of the serving proceedings.

3.6 Failure to Respond to a Lawsuit

Under Article 458 of the Code of Civil Procedure, if the defendant has been validly served and does not respond to a lawsuit within the term granted by the court, he will be declared as a defendant in default and the judicial process will continue without him.

The procedural act that declares the defendant to be in default will be served (if the address is unknown, it will be considered duly notified through the publishing of the Court's decision through a legal notice in a newspaper) as well as the following Court decisions: the declaration that the proceedings have been corrected from procedural defects, the scheduling of the hearings, the Court's final decision and the enforcement of the decision against the defendant in default.

If the defendant is declared in default, a relative presumption regarding the truth of the arguments of the claimant is raised, unless one of the following circumstances applies:

- if there are several defendants, and one responds to the lawsuit;
- if an unavailable right is involved;

- when a cause of action must be demonstrated by written evidence that has not been submitted with the claim; or
- when the Judge simply considers the assertions of the claim to be unconvincing.

According to Article 462 of the Code of Civil Procedure, the defendant in default can be incorporated into the judicial process at any time but will be subject to the procedural stage at which he is incorporated.

3.7 Representative or Collective Actions

Peruvian law does not allow for actions akin to US opt-out class actions. The methods available for group redress under Peruvian law are fundamentally different.

First, Peru has a mechanism called *proceso para la protección de intereses difusos* (*intereses difusos* for short). Under Article 82 of the Code of Civil Procedure, *intereses difusos* are procedures to provide injunctive relief to stop a defendant from harming public goods, such as the environment or archeological and historical sites.

Accordingly, the remedy awarded from *intereses difusos* proceedings (generally, an injunction) accrues to the benefit of the common good. Indeed, to the extent any damages are recovered, the amount recovered does not go to individual claimants but instead to the local government of the place where the harmful conduct action took place.

Peru also has a mechanism called *proceso para la protección de intereses colectivos* (*intereses colectivos* for short), which is a procedural device to aggregate and join multiple individuals as claimants in a single lawsuit against a defendant. The key feature of this collective action is that a group or class of individuals might be represented in litigation by public agencies (or through a delegation of powers by non-governmental non-profit organisations), provided that the Court can identify a specific category of affected prospective claimants.

Recent Peruvian legislation has instituted an opt-out form of an *intereses colectivos* action, exclusively for consumer protection subject matters. This type of action was established by the Consumers Protection Code - Law 29571 (Article 131) and the Supreme Decree 030-2011-PCM, which approves class action rules for consumer protection ('INDECOPI Actions' for short).

INDECOPI Actions are not brought by individual consumers, but rather by INDECOPI (a government agency with the purpose of protecting consumers), or else by a non-profit organisation that has been assigned by INDECOPI. INDECOPI or a non-profit organisation may file an action for restitution or for damages for the benefit of consumers harmed by a supplier's violation of consumers' legal or contractual rights.

3.8 Requirement for a Costs Estimate

Before a cost estimate for the litigation can be provided to the client, attorneys-at-law (or the law firm) must verify that the potential litigation does not conflict with any prior clients or processes.

If there is no conflict of interests, a cost estimate can be provided, taking into consideration the legal fees to be charged to the client for the legal services, and the Court fees for specific procedural acts, whose cost is established in an administrative resolution issued by the Executive Council of the Judiciary at the beginning of each year.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

Under Article 636 of the Code of Civil Procedure, a claimant can request a motion to obtain injunctive relief before the judicial process has begun. However, once the injunction has been executed, the claimant must file the lawsuit within the next ten days. Failure to comply with the filing of the lawsuit in the given timeframe results in the injunction relief expiring.

On the other hand, according to Article 284 of the Code of Civil Procedure, all legitimised persons can request the securing of evidence before initiating a process. This motion must state the generic claim to be filed and the grounds that justify the anticipated motion.

Peruvian Judges are empowered to assure the necessary evidence in order for the judicial process to be filed.

4.2 Early Judgment Applications

A party cannot apply for an early judgment. The exception to this rule is provided in Article 473 of Code of Civil Procedure, which states that, if the means of proof are only documentary or a matter of law, the final decision will be issued following only an oral hearing; even in this case, the Judge will render a decision regarding all the merits of the dispute.

4.3 Dispositive Motions

According to Peruvian Law, there are no dispositive motions before the trial other than the obligation to file a non-jurisdictional application with a Settlement Centre or a Justice of the Peace Professional Court.

4.4 Requirements for Interested Parties to Join a Lawsuit

Whoever has a substantial legal relationship with one of the parties so that the effects of the judgment that resolves the claim should not be extended to them, but who may be adversely affected if said party is defeated, may join the process with that party.

This intervention can be admitted even during the second instance. The intervener can carry out procedural acts that are not in opposition to the party that helps and do not imply disposition of the right discussed.

Interested parties must demonstrate a legitimate interest. The request will have the formality foreseen for the lawsuit, in terms of what is applicable, and the corresponding evidential means must be accompanied.

The judge will grant or reject the request for intervention outright. In the first case, it will process the requests of the legitimated third party. Only a resolution that denies the intervention can be challenged. The joinder party is incorporated into the process in the state it is in at the time of its intervention.

4.5 Applications for Security for Defendant's Costs

As a general rule, a defendant cannot ask for a sum of money as security for the defendant's costs.

Only in cases where the claimant requests injunctive relief does the defendant have the right to a guarantee in his favour to secure the reimbursement of any damages that may arise as a consequence of the execution of the injunction.

4.6 Costs of Interim Applications/Motions

Peruvian law requires a payment to initiate a legal action before the Courts (except for constitutional process and when the plaintiff requires judicial aid).

Other payments – established in an administrative resolution issued by the Executive Council of the Judiciary at the beginning of each year – can be required, depending on the nature of the dispute. Concepts that are not detailed in the administrative resolution do not require the payment of any additional costs.

In addition to the concept of the application, the amount to be paid is determined based on the amount in dispute. The greater the amount in controversy, the greater the cost to pay.

4.7 Application/Motion Timeframe

Although the procedural rules regulate many of the terms of the process, in reality the motions are solved according to the caseload of each Court.

However, if the Court does not respond to the motion in a reasonable timeframe, the party can file an administrative complaint against the Judge.

5. Discovery

5.1 Discovery and Civil Cases

Discovery is not available in Peruvian civil cases, so it is not possible to obtain evidence (documents or witness testimony) at a pre-trial stage. However, Article 284 of the Code of Civil Procedure allows the presentation of evidence before the trial if there is imminent danger of damage or disappearance.

This request must be motivated, and has to be granted by the courts. For example, the parties may require the exhibition of a will, financial books, and accounting records, among others.

5.2 Discovery and Third Parties

Third parties are only obligated to present or exhibit evidence that is owned by one of the parties to the process, or if the documents concern them directly. This is the one special case where third parties can be forced to produce evidence in trial.

If one of the parties or a third party fails to produce the evidence requested, the Court may fine them and take their conduct into consideration when issuing the final decision.

5.3 Discovery in this Jurisdiction

According to the concept of burden of proof, parties must submit evidence to sustain their case. Despite this, there are no specific rules governing the disclosure of documents, and the parties are not required to generate specific evidence unless requested by the Court. However, if one of the parties fails to submit evidence requested by the Court, the Judge may fine them and take their conduct into consideration when issuing the final decision.

5.4 Alternatives to Discovery Mechanisms

The Code of Civil Procedure requires parties to provide all evidence that may be related to their case when the lawsuit is filed. All documents, witnesses and expert opinions must be announced in advance of the lawsuit. If evidence is produced after the lawsuit is filed or if the plaintiff was not aware of its existence at such time, it can be submitted to the court when the trial has already begun.

The evidence must refer to the facts of the claim. Any evidence that does not have this purpose will be rejected.

The following means of proof will be rejected from the outset:

- non-controversial or impossible facts, or those that are notorious or of public evidence;
- facts that are affirmed by one of the parties and recognised by the other. However, the judge may order the perfor-

mance of evidentiary means in the case of unavailable rights, or may presume fraud or procedural fraud;

- the facts that the law presumes without admitting proof to the contrary; and
- national law, which must be applied ex officio by the judges. In the case of foreign law, the party invoking it must prove the existence of the foreign law and its interpretation.

Exceptionally, when the evidence submitted by the parties is not enough to convince the judge, additional evidence might be required by the judge.

5.5 Legal Privilege

The disclosure of privileged information would be considered a criminal offence.

All attorneys must be members of the Peruvian Bar Association in order to be allowed to litigate in Peru, and every bar association has a regulatory code including the concept of legal privilege and the prohibition of disclosure of information about the client. There is no distinction between external or in-house counsel.

5.6 Rules Disallowing Disclosure of a Document

There are no rules other than legal privilege and banking and tax secrecy that allow a party not to disclose a document.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Every application for injunctive relief is associated with a principal cause of action. The application must comply with the following conditions:

- that the applicant's alleged right has the factual and legal grounds to generate a degree of certitude, and is accompanied by the appropriate evidence;
- that there is a danger in the delay (ie, the effectiveness of the judgment will be jeopardise if the Court delays the granting of such injunction);
- that the requested injunction is reasonable; and
- that the applicant offers a security for the reimbursement of any damages that may arise as a consequence of the injunction's improper execution.

Peruvian law allows two types of injunctive relief: specific injunctions and generic injunctions.

Specific injunctions are specifically established in the procedure law, and include the following:

- An injunction for a future execution aims to ensure that funds will be available in the event a claim is successful. If the final judgment orders the payment of money and the defendant fails to comply, the assets affected by the injunc-

tion will be auctioned, and the profits will be used to pay the debt.

Freezing orders and seizures are other specific injunctions. Freezing orders are juridical impositions on specific assets, although this does not result in dispossession. However, in a seizure, there is a dispossession of the asset.

- An interlocutory injunction on the substance is granted because of the urgency of the petition, or when strong evidence is presented. Generally, this type of injunction is requested for family and minors matters.
- Innovative injunctions seek to modify the status quo (ie, change the legal scenario in favour of the claimant).
- Non-innovative injunctions seek to preserve a status quo (ie, maintain the legal scenario).

Generic injunctions include all cautionary measures for the purposes of ensuring compliance with a judgment, but do not have a specific regulation.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

One of the factors affecting justice in Peru is the caseload of each Court. On average, it takes between four and six weeks to obtain injunctive relief.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Under Article 637 of the Code of Civil Procedure, the request for injunctive relief is granted or rejected without service to the respondent, based on the grounds and evidence filed with the request.

If the injunction is rejected, the applicant can challenge the decision. In this case, the respondent is not notified, and the Superior Court issues a decision without admitting any intervention.

Once the injunction has been issued, the respondent may file an opposition within a period of five days, which does not suspend its effectiveness. If the opposition is granted, the Judge annuls the injunction.

6.4 Applicant's Liability for Damages

The applicant can be held liable for damages suffered by the respondent if the injunction is later dismissed. To secure the reimbursement of any damages that may arise as a consequence of the execution of the injunction, the applicant must offer security with the request.

In terms of its nature and amount, the admission of the security, is decided by the Judge who can accept it or modify it.

If the respondent suffered damages as a consequence of an injunction that is later dismissed, those damages will only be reimbursed if proven.

If the applicant is the Peruvian State, no security is required.

6.5 Respondent's Worldwide Assets and Injunctive Relief

It is not prohibited to require the Courts to grant injunctive relief against the worldwide assets of the defendant, but the execution of the measure will depend on the law of the country where the asset is located. The decision of the Peruvian Court must be approved by the foreign Court.

Usually, the injunctive relief will be granted against assets located in Peru.

6.6 Third Parties and Injunctive Relief

Injunctive relief can be obtained against third parties but – pursuant to Article 623 of the Code of Civil Procedure – only if the third party is related to the merits of the claim and if he was duly notified of the lawsuit.

6.7 Consequences of a Respondent's Non-compliance

Considering the seriousness of the infringement of a judicial order, the Court can impose compulsory fines or sanctions, and may even notify the Prosecutor's Office because it may be considered a criminal offence.

7. Trials and Hearings

7.1 Trial Proceedings

The trial in a civil process in Peru has the following stages:

- The claim, when the parties file their claims (complaint, response to the claim, or defence), submitting all their evidence. The court reviews the legal standing of the parties and their interest in the dispute, and analyses whether the court is competent to assume the case and whether the parties have the legal capacity to sue and be sued. If the complaint fulfils all the requirements, the process is initiated.
- The evidence stage, when the parties exhibit all the evidence already submitted in order to convince the judge.

The judge schedules a hearing with the purpose of examining the witness, expert opinions, and other evidence that may need specific attention. Under Article 202 of the Code of Civil Procedure, the hearing will be conducted by the judge.

If one of the parties is present at the hearing, it will be held only with said party. If both parties do not attend, the judge will conclude the process.

The evidence provided by the parties is exposed in the hearing in the following order:

- the experts, who summarise their conclusions and respond to the observations made by the parties;
- the witnesses, according to the examination performed directly by the lawyers. The judge may ask questions;
- the recognition and display of documents; and
- the testimony of the parties, beginning with the defendant.

If a judicial inspection has been offered within the same jurisdiction of the venue of the court, it will be carried out at the beginning, together with the expert opinion. When the circumstances justify it, the judge, in a duly motivated and unchallenging decision, will order the performance of the judicial inspection in a special hearing.

Also, a post-hearing brief will be scheduled for the parties to deliver their final arguments orally.

The decision-making stage begins after the Judge completes the first two stages. Its ruling either resolves the conflict or dismisses any judicial uncertainty under a principal of congruency, and should state the reasons supporting the judgment.

A challenge of the judgment may be filed by any of the parties that disagree with the ruling.

Finally, if the losing party fails to comply with the judgment, the judge is empowered to activate the legal mechanisms that have been established to enforce the decision.

7.2 Case Management Hearings

According to Peruvian Law (which is based on civil law), the proceedings are mostly conducted through written submissions. Therefore, the main hearings in a procedure are the evidentiary hearing and the post-hearing brief prior to the issuance of the final decision.

In that sense, it is not possible to identify a short hearing or a case management hearing.

7.3 Jury Trials in Civil Cases

Jury trials are not available under Peruvian law.

7.4 Rules That Govern Admission of Evidence

The filing of a claim must contain the facts, the legal grounds and the evidence. After that, when the defendant answers the claim, he or she should submit all the evidence of their defence. Thereafter, only evidence related to new facts will be admitted.

If the Judge identifies a gap in the process, he or she may require new evidence to be submitted (ex officio).

7.5 Expert Testimony

An expert opinion is permitted at trial when the assessment of the disputed facts requires special knowledge of a scientific, technological, artistic or other similar nature.

The expert opinion will be motivated and accompanied by the relevant appendices, and will then be explained at the evidence hearing.

If the Judge identifies a gap in the process, he or she may require an expert opinion to be submitted (ex officio).

7.6 Extent to Which Hearings are Open to the Public

As a general rule, the hearings are public. However, they can be carried out privately due to special causes such as children's rights, for example.

On the other hand, the transcript of the hearing that is inserted in the judicial docket can only be accessed by the parties.

7.7 Level of Intervention by a Judge

According to Article II of the Preliminary Title of the Code of Civil Procedure, the Judge is the director of the process. In this sense, during a hearing or trial, the Judge has the power to intervene, request additional evidence, interrogate the parties or witnesses, and formulate questions, with the limitation of not replacing the burden of proof for each party.

As a general rule, the issuance of the final decision is made after the hearing. However, in summary proceedings, the decision can be made at the end of the hearing and can only be postponed for ten days after the hearing in exceptional circumstances.

7.8 General Timeframes for Proceedings

The timeframe of a trial in Peru depends on three factors:

- the type of process (if it is summary, abbreviated or cognitive);
- the complexity and evidentiary stage; and
- the caseload of each court.

Approximately, the timeframe is as follows:

- summary procedure: from two to four years.
- abbreviated procedure: from three to five years.
- cognitive procedure: from four to seven years.

8. Settlement

8.1 Court Approval

If the parties reach an agreement and intend to conclude the process claiming the agreed settlement, the Court's approval is necessary.

The Court will approve the settlement only if both parties have agreed on reciprocal obligations, if the rights that are involved are patrimonial, if the public policy is not affected and – if the agreement involves the settlement of all the judicial claims – if the parties state that the judicial process is concluded.

If the agreement does not involve the settlement of all the claims, the judicial process will continue regarding only the non-settled claims.

If the judicial process has been concluded with a final decision, the Court will not approve a settlement. In this case, the parties have the right to agree on how to execute the Court's decision.

8.2 Settlement of Lawsuits and Confidentiality

The parties can agree to keep a settlement confidential. However, the agreed confidentiality encounters a limitation if a Court orders either party to exhibit the settlement.

8.3 Enforcement of Settlement Agreements

Under Article 688.8 of the Code of Civil Procedure, the private document that contains the agreed settlement is an executive title that can be enforced through a process.

Once the lawsuit has been filed, the Court will request the counterparty to comply with the agreed obligations. According to Article 690-D of the Code of Civil Procedure, there are only three valid grounds upon which to challenge the judicial order: that the obligation is unenforceable or undetermined, that the executive title is null or false, or that the obligation has been extinguished.

If the counterparty challenges the judicial order, the Court will give the claimant three working days to answer the arguments. The Court will then issue a decision and, if the grounds of the counterparty are dismissed, said decision might be challenged. Once the Court's decision is final, the enforcement of the execution is initiated.

How the enforcement is executed will depend on the nature of the obligation (a specific performance and restitution, monetary compensation, etc).

8.4 Setting Aside Settlement Agreements

There are two ways to set aside settlement agreements: the parties voluntary agree to terminate the agreement, or the

Court issues a decision declaring the settlement void or ineffective.

9. Damages and Judgment

9.1 Awards Available to a Successful Litigant

Through a judgment, the judge concludes the dispute and renders a sentence (express, precise and reasoned decision), which may contain the following, depending on the merits of the dispute:

- declaration relief;
- monetary compensation (payment of a loan, penalty, etc);
- a specific performance and restitution;
- a rectification; and
- interests and costs, if applicable.

9.2 Rules Regarding Damages

Since Perú is a Civil Law system, the legal framework (Peruvian Civil Code and some specific provisions about product or transport liability, for instance) regarding damages contemplates contractual damages and tort damages. Punitive damages are prohibited.

There is no legal source that may limit the amount of damages, but it is possible to state contractual rules with the aim of limiting the eventual amount of damages. In fact, in complex or very sophisticated industries, it is very common to state clauses that limit eventual damages or penalties to a specific amount.

9.3 Pre- and Post-judgment Interest

The rules for the calculation of interest in cases where the parties litigate based on a previous defined legal relationship should be distinguish from the rules for cases in which the judgment itself creates the monetary obligation. In the first case, the calculation of any kind of interest (legal, compensatory, etc) would be defined by the agreement of the parties in that regard.

In the second case, when the source of the obligation is the judgment itself, the calculation of interest follows the provisions of the Peruvian Civil Code. Therefore, if a party claimed the payment of reparation (claim in tort) of a specific damage that occurred without a previous legal relationship, the claimant will be awarded only the legal interest that will accrue from the moment the harmful event occurred until the effective payment of the reparation, according to article 1985 of the Peruvian Civil Code.

9.4 Enforcement Mechanisms for a Domestic Judgment

Once a final decision is rendered, the enforcement of such must be done by the Court. In other words, the Judge must apply all the legal and procedural mechanisms for the en-

forcement of the decision, based on the submissions of the party. In particular, the Code of Civil Procedure establishes a stage aimed at enforcing the judgment.

Usually, if it is a monetary dispute, the enforcement of the judgment initiates with the application of injunctive reliefs (freezing assets or bank accounts) and concludes with the payment to the party. The payment will be a consequence of the money freeze in bank accounts or an auction that affects the assets of the debtor.

On the other hand, if the dispute aims for declaratory relief, the Judge is empowered to communicate directly with public institutions (ie, Public Registry) in order to bind the sentence with the erga omnes effect. In other words, the Judge is empowered to modify the legal scenario directly because of the final decision.

9.5 Enforcement of a Judgment From a Foreign Country

Judicial resolutions issued in a foreign country may be enforced in Perú pursuant to treaties signed between Perú and each country, and also after an exequatur proceeding. The procedural law establishes the presumption that reciprocity exists with respect to the force given in a foreign country to the judgments rendered in Perú. Anyone denying such reciprocity must refute this presumption.

Furthermore, in order to enforce a foreign judgment, an exequatur proceeding (non-contentious proceeding) must be initiated. To succeed in the exequatur proceeding, the claimant must meet the following conditions:

- the foreign judgment must not regard disputes in which Peru maintains exclusive jurisdiction;
- the foreign judgment must be rendered without any infringement of due process of law; and
- the foreign judgment must not contain a decision against Peruvian public policy.

10. Appeal

10.1 Levels of Appeal or Review Available to a Litigant Party

According to the Code of Civil Procedure, there are two means of challenge. The first is called remedies, and challenges procedural acts that are not contained in a resolution, while the second is called recourses, and challenges the contents of a resolution.

Recourses include, among others, reinstatement, appeal and extraordinary appeal:

- A reinstatement recourse challenges a decree (through the decrees, the development of the process is promoted through procedural acts of simple procedure).
- An appeal challenges a judgment that solves a conflict and establishes the rights of the parties. The Superior Court examines the resolution that causes damage, to either annul or revoke it.
- An extraordinary appeal (*recurso de casación*) may be filed against the second resolution rendered by a Superior Court, provided it includes a matter that is appropriate for review contemplated in the law, or if due process has been violated, a law has not been applied, or a law of substantive right has been unduly applied.

To justify the filing of such recourses, the challenged resolution must have caused damage, or it must be affected by a defect or error.

10.2 Rules Concerning Appeals of Judgments

In order for a Court to grant an appeal, it must comply with the formal and material requirements. Among others, the main requirements are the opportunity of the filing and the proper identification of the grounds of appeal.

10.3 Procedure for Taking an Appeal

The triggering event to file an appeal is the valid serving of the resolution to challenge, because it initiates the running of the term.

Once the appeal is granted, the file will be sent to the Superior Court.

If the appeal has been granted with suspensive effect, the Superior Court will summon the parties to an oral hearing, and will then issue a decision.

10.4 Issues Considered by the Appeal Court at an Appeal

The purpose of the appeal is to obtain a decision from the Superior Court to annul or revoke the first instance judgment. An examination of the first instance decision will take place and – if the appeal has been granted with suspensive effect – the Superior Court will summon the parties to an oral hearing.

The Superior Court cannot analyse points that have not been raised in the first instance, unless new means of proof are offered (which must be related to aspects discussed in the first instance).

10.5 Court-imposed Conditions on Granting an Appeal

A Court cannot impose any conditions to grant an appeal. However, the parties must comply with the formal and substance requirements of law.

10.6 Powers of the Appellate Court After an Appeal Hearing

The Superior Court can only annul or revoke the appeal decision.

In case of an annulment, the first instance Judge must render a new decision taking into consideration what was indicated by the Superior Court. If the Superior Court revokes the first instance decision, it will – in the same resolution – modify it and rule on the merits of the dispute.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

The general rule states that the losing party is responsible for paying the costs of litigation, unless a motivated decision exonerating said party is issued.

Litigation costs are established by each stage of the judicial process. However, if the Superior Court's decision revokes the first instance decision and the prevailing party is now the losing party, this losing party must pay for the litigation costs of both levels. The same criteria apply to the Supreme Court's decision.

If there are various claims, the reimbursement of the litigation costs is only required for those claims that were successfully acknowledged to the winning party.

Once the claims are settled, the prevailing party must file a motivated request for reimbursement of litigation costs, attaching the documents that sustain the request. The Court will serve the losing party with the reimbursement request, and will grant the losing party three working days to challenge it. After that, the Court will issue a final decision, which cannot be challenged by any of the parties.

11.2 Factors Considered When Awarding Costs

The reimbursement request must be motivated and sustained by documentation. However, the Court can increase or decrease the final amount, depending on the conduct of the parties during the process (eventual bad faith).

11.3 Interest Awarded on Costs

The costs of litigation are determined by the Court. Once the Court's decision is final, the obligated party has three working days to comply with the payment request. On the fourth day without payment, legal interest begins to accrue. The applicable interest rate is determined by the Peruvian Central Reserve Bank (legal interest).

12. Alternative Dispute Resolution

12.1 Views on ADR in this Jurisdiction

The Peruvian Constitution indicates that arbitration and mediation are methods of alternative dispute resolution (ADR), with the former being undoubtedly the most popular in Perú. Since the promulgation of the new Peruvian Arbitration Law (2008), which is based on the UNCITRAL Model Law, there has been a significant increase in the annual number of arbitrations, both domestic and international.

Additionally, in the construction field, some contracts (basically the ones with the Government) include Dispute Boards as a new method of ADR, but it is not yet possible to say whether these are successful.

12.2 ADR Within the Legal System

The most promoted ADR is arbitration. In the private sector, it is promoted by the main Arbitration Centres (AMCHAM, Cámara de Comercio de Lima, etc), seeking new arbitration agreements between contractual parties. On the other hand, arbitration is mandatory when a dispute arises between the State (acting as a private contractual party) and a supplier.

12.3 ADR Institutions

During the last few years, the promotion of arbitration as an effective ADR has increased. The most important Arbitration Centres are constantly organising academic events to promote the benefits of arbitration to the legal sector. Because of that, the Peruvian arbitration community has increased its members substantially during the last three years.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitrations

The main law in Peru is the Arbitration Law - Legislative Decree No 1071 enacted in 2008, which is based on the UNCITRAL Model Law. Its main procedural rules are applicable to both domestic and international arbitration, with few exceptions.

In addition, Peru ratified the New York Convention on 7 July 1988, by accession. Peru made no reservation to the Convention. Peru has also ratified the Inter-American Convention on International Commercial Arbitration. Both conventions

have been recognised in the Arbitration Law as applicable to the Peruvian system by means of Article 74.

13.2 Subject Matter not Referred to Arbitration

According to Article 2 of the Arbitration Law, claims related to unavailable rights to the parties, as well as those prohibited by the law or treaties or international agreements, may not be submitted to arbitration. If the parties can dispose of the rights in dispute, the dispute is arbitrable.

However, there is no specific list of matters that can be subject to arbitration.

13.3 Circumstances to Challenge an Arbitral Award

Against the arbitral award, the parties can only file for annulment before the Judiciary to challenge and set aside the award. The validity of the award will be reviewed on the grounds exhaustively established in Article 63 of the Arbitration Law.

In arbitration, Courts could set aside an award for an 'abuse of power' exercised by the Arbitral Tribunal, such as:

- issuing the award outside of the agreed term;
- addressing and deciding on matters not brought by the parties;
- not following the rules agreed by the parties or due process;
- issuing an award with contradictory reasoning or absence of reasoning regarding a matter in dispute;
- not taking relevant evidence into valuation; or
- failing to provide the parties with equal opportunities of defence, among other essential breaches to procedural due process standards.

Peruvian Courts are prohibited from deciding on the merits of the controversy or about the content of the decision, and from qualifying the criteria, motivations or interpretations exposed by the Arbitration Tribunal. However, contradictory reasoning or absence of reasoning on a matter in dispute may be subject to annulment by the Court.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

The recognition of international awards is based on the New York Convention and the Panama Convention. Moreover, the Peruvian Arbitration Law has copied the grounds for not recognising and enforcing an award established in the New York Convention in its Article 75.

Article 8.6 of the Arbitration Law also provides that the Judge with the jurisdiction to enforce an award in Peru will be specialised in commercial matters or, as a default, specialised in civil matters located in the defendant's domicile (or, if the defendant is not domiciled in Peru, in the place where their goods are or where they exercise their rights).

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The New York Convention is applied to the recognition and enforcement of international awards, and the only grounds for not recognising the award or denying its enforcement are those established in the given convention, which include – among others – the standard for refusing enforcement on public policy grounds. In that sense, international awards that are incompatible with public policy may not be enforced in Peru.

Regarding Peruvian legislation and the enforcement of national awards, courts can only review said awards and stays of enforcement based on a party's request for annulment, which will only proceed based on formal aspects or breaches against the national public order. Courts cannot review awards based on substantial aspects, interfering with the criteria and reasoning process realised by the arbitrators.