

# Payet Rey Cauvi Pérez

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### **Amendments to the Operating Regulations for the *Reactiva Perú* Program**

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The Operating Regulations (the “Regulations”) for the *Reactiva Perú* Program (the “Program”), were amended through Ministerial Resolution No. 181-2020-EF/15 (the “Resolution”) issued on June 28, 2020, in order to establish other eligibility or exclusion criteria applicable to the companies benefiting from the Program.

The Resolution includes the following amendments:

#### **Loan Eligibility**

1. The funds obtained from a loan granted under the Program (the “Program Loans”) cannot be used to pay financial obligations for other Program Loans.

Restrictions prohibiting the distribution of dividends or the approval and/or distribution of profits (except for the amount and/or percentage corresponding to profits to be distributed to employees) during the term of the Program Loans, are still applicable, as well as the restrictions on the use of funds established in Section 5.3 of the Regulations (which was not modified), that include, among others, the (i) prepayment of financial obligations (unexpired debt) and (ii) the payment of expired obligations with the Financial System Entities (*Empresas del Sistema Financiero* – “ESF”).

2. The aforementioned new restriction must be incorporated as an obligation in the agreements that support the Program Loans, and non-compliance of said restriction will lead to the acceleration of the Program Loans, as well as the execution of the collaterals. The ESF cannot waive said non-compliance.
3. Additionally, it is specified that if the Development Bank of Peru (*Corporación Financiera de Desarrollo* – “COFIDE”) during its ex post evaluation - detects the breach of said obligations, it is empowered to require the ESF to replace the affected Program Loan within a period

of 5 business days. If the replacement is not made, the guarantee granted to the affected Program Loan is automatically cancelled and COFIDE must inform this to the Peruvian Central Reserve Bank (*Banco Central de Reserva del Perú*).

#### **Company Eligibility**

4. Persons under the scope of Law No. 30737, legal entities included under the scope of the Thirteenth Final Complementary Provision of said law, any person or legal entity subject to processes for corruption and related crimes, or whose representatives are being investigated for said crimes, shall not have access to the Program; unless the persons or legal entities have complied with the full payment of the respective civil reparation and as long as they are qualified to contract with the State.
5. The following are grounds for exclusion:
  - (a) Legal entities that have applied for the Accelerated Refinancing Procedure (*Procedimiento Acelerado de Refinanciación Concursal* – “PARC”). If a debtor accesses PARC after being granted the guarantee under the Program Loan and this event is detected by the ESF or by COFIDE, the legal entity is excluded from the Program and the guarantee is terminated.
  - (b) Natural persons or legal entities disqualified by the Supervising Agency for Government Procurement (*Organismo Supervisor de las Contrataciones del Estado*).
6. Compliance with the requirements indicated in Sections 4 and 5 above will be accredited with the filing of an affidavit to the ESF in accordance with Annex 4 of the Regulations. Including false information in the affidavit will lead to the acceleration of the Program Loans, without being able to be waived by the ESF.

#### **Loan and Coverage Limit**

7. In the aforementioned affidavit (Annex 4 of the Regulations), applicants must also indicate whether or not they have received a Program Loan, and if so, the amount thereof, in order to determine the coverage of the new Program Loan in accordance with the provisions set forth in Supreme Decree No. 124-2020-EF (“Supreme Decree”) and Ministerial Resolution No. 165-2020-EF/15.

In order to determine the maximum amounts of credits per debtor, the ESF takes into account all the Program Loans granted prior to the effective date of the Supreme Decree, in order to determine if (i) the company can access a new loan and, if applicable, up to what amount, and (ii) the coverage of the guarantee for the new loan.

8. A new criterion to determine the guarantee's coverage limit is incorporated for credits granted to micro-enterprises (if they carry out activities included in the New Simplified Single Regime - New SSR (*Nuevo Régimen Único Simplificado – Nuevo RUS*)). The individual guarantee of the Program covers a maximum of the equivalent of 3 months of their average monthly income or average purchases in 2019, according to the records at the National Superintendency of Customs and Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria - SUNAT*).

Note: This article is intended to be a general summary of the Resolution. However, it does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific situation.

### **About Payet, Rey, Cauvi, Pérez Abogados**

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Our full-service practice covers all areas of business law, including mergers & acquisitions, banking and finance, capital markets, project financing, real estate, foreign investments and privatizations, competition & antitrust, natural resources, environment, administrative and regulatory law, intellectual property, tax law, labor law, dispute resolution and economic criminal law.