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## New Accelerated Refinancing Procedure

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Legislative Decree No. 1511, published on May 11th, 2020, created the Accelerated Refinancing Procedure (the "Accelerated Procedure"), an administrative procedure allowing debtors and creditors to agree on a Refinancing Plan (the "Plan") to reprogram the due dates on debt obligations. The Accelerated Procedure was enacted to prevent debtors from becoming insolvent, to prevent loss of businesses and jobs, to assure the payment of credits and to secure the payment chain.

The Accelerated Procedure will enter into force on the day following the enactment of its regulation, which must happen before June 8<sup>th</sup>, 2020.

The Accelerated Procedure will be available to all companies, regardless of size, that fall under Law No. 27809 (the "Law"), the Peruvian Bankruptcy Law. This means individuals, conjugal societies, undivided successions, trusts, pension fund administrators and all companies that are part of the financial and/or insurance sectors are not eligible to apply for an Accelerated Procedure. The specific requisites to apply for the Accelerated Procedure will be set forth in the regulation.

The main characteristics of the Accelerated Procedure are:

1. It is an electronic procedure.
2. Companies can file for the Accelerated Procedure until December 31<sup>st</sup>, 2020 and can only carry out one Accelerated Procedure.
3. The enforceability of obligations will be suspended from the date the Accelerated Procedure is published in the Bankruptcy Gazette (Boletín Concursal), the official Indecopi online publication for bankruptcy notifications, until the date the Plan is approved or rejected. Also, during this period an automatic stay on all assets will be granted in favor of the debtor.
4. Once the Accelerated Procedure is published, no other petitions to initiate a regular bankruptcy procedure will be processed, as the Accelerated Procedure will have precedence over all other requests. If a regular bankruptcy procedure petition was filed before the Accelerated Procedure petition, but the Accelerated Procedure has not been published yet, the Accelerated Procedure will have precedence and the regular procedure will be suspended. If later the Accelerated Procedure is published, the

regular procedure will end.

5. The Avoidable Transfers regime set forth in Articles 19 and 20 of the Law will apply to the Accelerated Procedure from the date of its publication.
6. Filing false information is considered as an administrative infraction. The regulation must establish how these infractions will be handled and their consequences. However, if the debtor gives false declarations as part of the Accelerated Procedure, the Plan and Accelerated Procedure will be declared null and void.
7. Financial and banking entities are not required to downgrade the debtor's risk rating when a debtor enters into an Accelerated Procedure.

How is the Accelerated Procedure carried out?

1. The petition is filed before the Bankruptcy Commission of Indecopi.
2. The debtor must file the petition through Indecopi's electronic filing system.
3. Indecopi will admit the request and publish it in the Bankruptcy Gazette.
4. All creditors must file credit recognition requests. The procedure for such requests will be defined in The Accelerated Procedure regulations. filed after the time period granted will be dismissed.
5. Employment credits and consumer credits<sup>1</sup> will not be recognized. However, these credits must be included in the Plan. Controversial credits (credits that are being discussed in arbitration, judicial or administrative procedure) will not be recognized either, but they will be included in the Plan, provisioned, and paid if and when they are settled.
6. Only recognized creditors will be a part of the creditors meeting with voting rights. Employment and related creditors will not have voting rights.
7. The creditors meeting will be carried out virtually and in the presence of a Notary Public. The Accelerated Procedure regulations will set forth the quorum, majorities, and challenge rules, as well as other formalities.
8. The creditors meeting will not replace the general shareholders meeting, and at the start of an Accelerated Procedure, the debtor will have possession of all their assets and the current management will remain in place. The only purpose of the creditors meeting is to approve or reject the Plan. Because of this, the creditors meeting will only be held once, unless the decision regarding the Plan is scheduled for a later date (no more than 10 days after the first meeting).
9. The Accelerated Procedure ends when the Plan is approved or rejected.

Relevant considerations regarding the Plan:

1. The Plan must include:
  - (i) All credits, including recognized credits, unrecognized credits (employment and consumer credits, among others), controversial credits and all credits that appear on the balance sheet.
  - (ii) Treatment and payment schedule for each credit class.
  - (iii) Interest rate, if applicable.

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<sup>1</sup>Legislative Decree No. 1511 has not set forth a definition for "consumer credits":

- (iv) That at least 40% of annual payments under the Plan will be destined for paying employment credits.
  - (v) That at least 10% of annual payments under the Plan will be destined for paying consumer credits.
  - (vi) The appointment of a supervisor to verify compliance with the Plan if creditors who represent more than 30% of recognized credits request one. In this case, creditors who requested the appointment will pay the supervisor's fees.
2. All creditors must comply with the Plan
  3. The regulation to be enacted will set forth the grounds for declaring the Accelerated Procedure and Plan's nullity. If the Plan is declared null and void, a creditors meeting can be called to approve an amended Plan.
  4. If the debtor does not comply with the Plan, it will be terminated, and any creditor can request the payment of its credits under the originally agreed upon terms and conditions.

Note: This article is intended to be a general summary of the Decree. 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**

Founded in 1996, Payet, Rey, Cauvi, Pérez Abogados is one of the preeminent law firms in Peru, with extensive experience in providing high value-added services for all types of business activities.

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.