

# PERU

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## **LAW AND PRACTICE:**

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*Contributed by Payet, Rey, Cauvi, Pérez Abogados*

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.



# Law and Practice

Contributed by Payet, Rey, Cauvi, Pérez Abogados

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**Payet, Rey, Cauvi, Pérez Abogados (Lima - HQ)** is known for its work on the project development and project financing (non-recourse and limited recourse) of highways, ports, airports, pipelines, power plants, electrical transmission lines, wastewater treatment plants, dams and water deviation projects, among others. The projects and infrastructure practice group acts for domestic and foreign clients in a range of economic sectors, regularly advising investors in bidding processes related to concessions, privatisations, un-

solicited proposals (private initiatives), public-private partnerships, and management and consulting contracts. Other clients include financial entities, construction companies and rating agencies. Attorneys have a wide range of experience in advising throughout all stages of a project, from the initial legal planning and structuring to the subsequent financing, pre-operative and developing stages, and providing support for the initiation of operations and eventual sale.

### Authors



**Aldo Reggiardo** is a partner at the firm and handles corporate and financial issues in general, including the structuring of financing, capital markets, and project finance in the infrastructure, energy and mining sectors. He has extensive experience in mergers and acquisitions, the restructuring of liabilities of insolvent companies and the issuance of debt and equity, in the local market and the principal international markets. He has written several articles on corporate law, banking, project finance, bankruptcy law and securities law in specialised journals.



**Juan Antonio Egüez** has extensive experience in mergers and acquisitions, takeover bids, corporate transactions in general and the issuance of debt and equity. He is a partner at the firm, and focuses on corporate law, project finance, bankruptcy law and civil law.



**Alan García Nores** is a senior associate who concentrates on corporate law, capital markets and regulatory law. He has extensive experience in mergers and acquisitions, takeover bids, corporate transactions in general and the issuance of debt and equity.



**Mario Lercari Bueno** is an associate who handles corporate and financial issues in general, including the structuring of financing, mergers and acquisitions, capital markets, and project finance in the infrastructure sector.

## 1. Project Finance Panorama

### 1.1 Recent History and Expected Developments

Project finance has become a more and more frequent financing method in Peru over the past 15 years, in particular for the financing of public and private infrastructure projects in different economic sectors, with special emphasis in public services such as electricity generation and transmission, toll roads, sanitation, oil and gas, mass transit systems, irrigation and industrial projects, among others.

The economic regime chapter of the Peruvian Constitution, in force since 1993, establishes that the development of the Peruvian economy shall be reached through private investment with subsidiary governmental participation. This directive, together with open market public policies in force for most of the last three decades, has allowed for an unprecedented increase in the number of large-scale infrastructure projects in the hands of the private sector which seeks to

reduce the country's infrastructure gap. In this context, project finance has become the preferred financing technique in complex transactions.

Since 2016, growth in the infrastructure sector has been paralysed due to the Peruvian ramifications of the "Lava Jato" investigation in Brazil, as well as to allegations of bribery with regards to Peruvian construction companies in a criminal case popularly referred to as the "Construction Club". In response, the Government of Peru ("GOP") enacted Urgency Decree 003-2017 to prevent companies that are convicted of, or have confessed to, corruption-related crimes from selling or in any way disposing of their assets. Although, this regulation was issued to ensure compensation for damages to the GOP, it failed to achieve its purpose, as several projects ended up being paralysed but without the GOP collecting any monies to fulfil its original purposes.

Law 30737, a new regulatory framework to replace Urgency Decree 003-2017, has been enacted by Congress in 2018 in an effort to assure immediate payment of the civil compensation to the GOP in cases of corruption and similar crimes; the executive branch has also approved its corresponding regulations. These new regulations provide a more balanced framework as one of its main purposes is to assure the continuity of infrastructure projects and of the construction companies themselves.

### 1.2 Institutions Typically Acting as Sponsors and Lenders

The usual sponsors since the beginning of the Peruvian infrastructure projects boom have been Peruvian, Brazilian and Spanish construction companies, alone or in consortium with international specialised players who contribute the necessary experience in the operation of similar projects.

However, due to the Peruvian ramifications of the “Lava Jato” investigation in Brazil, during the past few years Brazilian giants such as Odebrecht, OAS, Camargo Correa, Andrade Gutierrez and Quieroz Galvao, have been sidelined, leaving an empty space yet to be filled. Similarly, certain of the most important Peruvian construction companies have been caught in a comparable situation as a result of the “Construction Club” investigation since 2017.

Lenders in large-scale to public private partnerships are typically pension funds and insurance companies through the international capital market, or multilateral credit entities such as CAF, IADB and IFC. It is also common to see commercial banks participating in smaller tranches of these projects, usually subordinated or with shorter terms.

Small and mid-size projects are typically reserved to commercial banks and, in some cases, development banks such as Natixis, DEG and Peruvian state-owned COFIDE.

The participation of Chinese banks is growing quickly, although they have almost exclusively participated in direct financings to Chinese companies operating in Peru, specifically in the mining and the electricity sectors.

### 1.3 Public-private Partnership Transactions

Since the early 1990s, the GOP has passed legislation to promote private investment by means of joint participation of the public and private sector. This regulatory framework focused mainly on the transfer to the private sector of economic activities previously exclusively developed by the GOP.

In 2008 the executive branch issued Legislative Decree No 1012 regulating PPPs and establishing a unified legal framework for their development. Said decree was later repealed by Legislative Decree No 1224, subsequently amended by Legislative Decree No 1251 (the “PPP Law”). Until this date, the PPP Law establishes the legal framework for the development of PPPs. The PPP Law applies to all sectors, but in

certain cases it may be complemented by industry-specific regulations.

The PPP Law does not regulate any specific contractual structure for the development of PPPs. Article 12.1 of the PPP Law establishes that PPP agreements grant the investor the right to collect fees, tariffs, prices, tolls or any other systems for recovery of investments, as well as additional benefits expressly agreed in the contract, which may include complementary services.

There are no constitutional limitations on the GOP’s participation in PPPs. However, there are certain restrictions concerning the National Budget System (*Sistema Nacional de Presupuesto*) and the National Indebtedness System (*Sistema Nacional de Endeudamiento*). As certain PPPs require the GOP to grant financial guarantees or to act as co-financer, such systems establish the procedures and limits for the financial exposure of the GOP. Congress enacts an annual budget law and an annual indebtedness law wherein limits for the GOP to act as co-financer are set.

Other limitations are established in the PPP Law, including that PPP agreements may not be amended during the first three years from their execution (with certain exceptions that, as of 2017, do not include bankability matters).

### 1.4 Main Issues Considered When Structuring the Deal

With respect to PPPs, the PPP Law establishes that projects may qualify as self-sustainable or co-financed by the GOP.

Co-financed projects require material guarantees and/or financing from the GOP as the expected cash flows of the projects are inferior to the required investment. It has been common practice for the GOP to grant co-financed projects in an effort to reduce the infrastructure gap or to cope with social and political pressure to reduce such gap. However, in the past two to three years, due to very public corruption scandals related to public bidding processes, co-financing has been in the public eye.

Today, most projects currently in the bidding or pre-bidding stages are offered as self-sustainable, which has in certain cases limited their commercial appeal.

The most common structures in Peruvian project finances have been BOT, BOOT and/or DFBOT agreements. In the case of private infrastructure projects, notably in the energy sector (fuel storage facilities and electricity generation and transmission, among others), structures usually contemplate an offtake agreement including take-or-pay obligations.

## 2. Guarantees and Security

### 2.1 Assets Typically Available as Collateral to Lenders

It has been common practice that specific forms of securities that may be granted as collateral to the “permitted creditors” be directly established in PPP agreements. In the specific case of concession agreements, typical securities are:

- mortgages over the concession;
- pledges over the shares issued by the specific purpose vehicle; and
- a security interest over the concession’s rights and/or cash flows (most commonly by way of an assignment of rights or transfer to a trust).

Personal guarantees from sponsor and sponsor-share restriction agreements are usually required during the construction stage of the relevant project.

With respect to the applicable formalities and perfection requirements, the general rule – including for trusts, pledges or assignments or rights – is that the security interest is created with the execution of the relevant security agreement; however, registration in the Registry of Movable Contracts (*Registro Mobiliario de Contratos*) provides erga omnes effect to the security interest. In the case of the mortgages, the security interest is created upon registration of the mortgage in the Real Estate Registry (*Registro de Propiedad Inmueble*), as provided by the Peruvian Civil Code.

### 2.2 Charge or Interest over All Present and Future Assets of a Company

Under Article 4 of the Pledges Law (*Ley de Garantía Mobiliaria*), a security interest in the form of a pledge may be granted over generic categories of assets of the grantor, subject to change in quantity and value.

Additionally, pursuant to Article 3.4 of the Pledges Law, a universal security interest in the form of a pledge may be granted over all present and future assets of a company to secure all obligations owed to a secured creditor.

A trust also provides the possibility to create a universal security interest over all present and future assets of a company to secure all obligations to the secured creditor.

### 2.3 Costs Associated with Registering Collateral Security Interests

The costs associated with registering collateral securities in Peru are: (i) the public notary fees and Public Registry fees, which are usually determined by the number of agreements to be extended as public deeds, and (ii) Public Registry costs, which are determined based on the value assigned to the collateral in the security agreement. Public Registry costs are capped at one tax unit with respect to each registration;

for the year 2018, a tax unit is equivalent to PEN4,150 (approximately USD1,275).

### 2.4 Granting a Valid Security Interest

To create a valid security interest over assets subject to registration, it is necessary to individually identify in the security document said assets.

On the other hand, when creating a security interest over assets that are not subject to registration, the parties may decide how to identify said assets; note that agreements creating liens over assets not subject to registration may also be registered before the public registries (*Registro Mobiliario de Contratos*). The Pledges Law allows pledges to be created over generic categories of assets in lieu of specific assets.

### 2.5 Restrictions on the Grant of Security or Guarantees

Legal limitations are applicable before foreclosing securities related to PPP Agreements. The GOP, as grantor of a concession, may hold certain rights in order to assure the continuity of the public service, including approving the company that will take over the project company or the project itself based on the experience and other requirements set forth during the bidding process. When PPPs or concession agreements are of public interest, regulations are in force to limit, in case of foreclosure, the ability of the lenders to conduct a standard foreclosure process, in order to maintain such public interest.

Moreover, lenders are not permitted to operate the project during the foreclosure proceeding or to act as concessionaires of the PPP as a result of such foreclosure (in case of adjudication). PPP agreements usually establish that during the foreclosure process, operation of the project will be carried out by a third party appointed by the lenders or the GOP, as may be established in the PPP agreement.

### 2.6 Absence of Other Liens

Lenders may conduct a search in the applicable Public Registry. If a lender is interested in conducting a search of the liens that may have been created by a company, he can request a “Certificate of Liens and Encumbrances” which will show every lien registered by such company before the Public Registry. A search can also be conducted on the electronic entry of real estate properties and of certain movable assets that are subject to registration (cars, vessels, airplanes, among others).

However, if a security document is not filed for registration with the applicable Public Registry then such lien will not appear in the “Certificate of Liens and Encumbrances” nor in a search of the assets’ electronic record. As mentioned, registration is not constitutive of most forms of security (except for mortgages) and therefore not all existing securities will be reflected in this certificate.

## 2.7 Releasing Typical Forms of Security

After payment in full to the secured creditors has occurred, the security may be released unilaterally by said creditor or by the appointed collateral agent, or by way of an agreement executed with the debtor. The release shall comply with certain formalities (eg, being executed as a public deed) for registration purposes or if agreed upon between the parties.

An agreement between the secured creditor and its debtor would also provide the release of the security interest.

## 3. Enforcement

### 3.1 Secured Lender Enforcing its Collateral

Securities may be foreclosed whenever permitted by the terms of the agreement between the parties, typically including the occurrence of breaches in payment obligations and other project-related breaches.

Mortgages over real estate property may only be foreclosed through a judicial sale. Exceptionally, certain mortgages related to PPPs – such as mortgages over concession rights – can be foreclosed by way of extrajudicial process which are usually regulated in the PPP agreement (for example, a direct sale, public or private bidding, among others).

Pledges can be foreclosed by way of any of the following, provided they are stipulated in the agreement: a judicial process, extrajudicial process following the terms agreed in the agreement (for example, a direct sale, public or private bidding, among others), or adjudication by the beneficiary itself in satisfaction of the debt.

Trusts may be foreclosed by any way regulated by the parties in the trust agreement.

It is common practice that PPP agreements include a specific regulation for the foreclosure of mortgages over project assets and the project itself (eg, concessions), as well as for the foreclosure of pledges over a portion of the share interest held by the sponsor who has contributed the necessary experience during the bidding process. These regulations usually provide that the lenders qualified as “permitted creditors” and the GOP will co-ordinate during the foreclosure process and that the potential acquirer will ultimately need to be approved by the GOP. In certain cases, PPP agreements may limit the GOP’s ability to terminate the PPP agreement after being given notice by the lenders of their intention to foreclose on the mortgage or pledge.

### 3.2 Upholding Foreign Law

The choice of foreign law will be valid, binding and enforceable under the laws of Peru, provided it does not conflict with Peruvian provisions related to international public policy or good morals.

It is not required as a matter of law that private project agreements and/or financing agreements be governed by Peruvian law. However, public project agreements with a governmental entity as counterparty (such as concession agreements) shall be mandatorily governed by Peruvian law.

Financing agreements are normally governed by the law chosen by the financial institution acting as lender.

On the other hand, security agreements such as pledges, mortgages and trusts over assets located in Peru are typically governed by Peruvian law (in the case of mortgages over real estate located in Peru, Peruvian law will be mandatory) in order to expedite foreclosure procedures.

### 3.3 Judgment Without Retrial

Foreign judgements are recognisable and enforceable in our jurisdiction by means of an exequatur. Furthermore, Peru is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and foreign arbitration awards are recognisable and enforceable in our jurisdiction. Any final judgment for a fixed or determined sum would be declared enforceable by the courts of the Republic of Peru, without reconsideration or re-examination of the merits of the cause of action in respect of which such judgment was given or relitigation of the merits adjudicated, provided that said recognition and enforcement will be subject to certain requirements being met (mostly related to due process).

### 3.4 Other Matters Impacting a Foreign Lender’s Ability

The figure of an onshore collateral agent may help expedite foreclosure procedures as they have the expertise and know-how to conduct such procedures, but there are no specific restrictions or matters that would prevent a foreign lender from enforcing rights under a loan or a security interest.

In the case of security interests over PPPs, legal restrictions are applicable before the foreclosure is carried out for domestic or foreign lenders. The GOP, as grantor of a concession, holds certain rights in order to assure the continuity of the public service; these include approving the company that will take over the project company or the project itself based on the experience and other requirements set forth in the bidding rules. When PPPs or concession agreements are of public interest, regulations are in force to limit, in case of foreclosure, the ability of the lenders to conduct a standard foreclosure process, in order to maintain such public interest. For example, a common requirement for a potential acquirer of a project to construct and operate highways in the Andes mountains of Peru will be to have previous experience in a similar geographic environment (eg, construction work at a certain altitude). Requirements may vary depending on the stage of the project at the time of foreclosure (ie, development, construction or operation).

### 4. Foreign Investment

#### 4.1 Restrictions on Foreign Lenders Granting Loans

The Peruvian Constitution guarantees the same treatment to both national and foreign investments, including providing financing facilities to local companies.

#### 4.2 Restrictions on Foreign Lenders on Granting of Security or Guarantees

There are no restrictions in connection with the granting of guarantees or securities by local companies in favour of foreign lenders. However, enforcing a security by means of adjudication by a foreign beneficiary itself with respect to real estate property within 50 km of the Peruvian borders is prohibited by Article 71 of the Peruvian Constitution, which establishes a prohibition on foreign investors to own such real estate property.

#### 4.3 Foreign Investment Regime

The Peruvian Constitution guarantees the same treatment for both national and foreign investments.

Furthermore, the Peruvian Constitution is guided by the principles of free private initiative, free market conditions, contractual freedom between parties according to regulations currently in force, freedom to possess and exchange foreign currency and to manage deposits and accounts in foreign currency. The GOP guarantees freedom of work and business, commerce and industry, which limits the role of the state in the economy exclusively to a subsidiary one.

Certain exceptions apply, based on national security, including the ownership of aviation companies and real property within 50 km of the Peruvian borders; in regard to real property, foreign investors may not acquire or possess, under any title, mines, land, forests, water, fuel or energy source, directly or indirectly, individually or as a company, under penalty of forfeiture to the state of the property acquired, except in the event of national necessity so declared by supreme decree approved by the Council of Ministers.

Peruvian regulation allows investors to enter into legal stability agreements with the State of Peru which grant certain guarantees in order to provide a stable regime to those local and foreign investors that seek to pursue economic activities in any sector. This type of agreement is entered into by the private sector company with the GOP represented by the Private Investment Promotion Agency – PROINVERSION. Stability agreements may grant the following guarantees:

- stability regarding the income tax regime that was in effect at the time of the agreement's subscription, so that the amounts that would correspond to the investors will not be subjected to a greater tax burden (stability of the investments, dividends, earnings and movement of funds);
- free disposition of currency;

- the freedom to internationally transfer foreign currency, including the total amounts corresponding to profit, dividends and capital, after the appropriate tax deductions;
- use of the most favourable exchange rate in the market.

#### 4.4 Restrictions on Payments Abroad or Repatriation of Capital by Foreign Investors

There are no restrictions on repatriation of capital, payments abroad or dividends distributions to foreign shareholders; however, tax withholdings are applicable. Furthermore, no approval, authorisation, notice, filing or other action is required to authorise the remittance of local or foreign currency abroad.

#### 4.5 Maintenance of Offshore Foreign Currency Accounts

In Peru, there are no restrictions on project companies maintaining offshore foreign currency. Using foreign accounts for reserve or to control cash flow is a common tool in complex project financings. However, taking into account Peruvian economic stability in the past decades and the existing economic freedoms – such as opening US dollar-denominated bank accounts, transferring monies abroad, no controls on currency exchange, among others – lenders are more and more comfortable with maintaining project and financing accounts within the Peruvian banking system.

### 5. Structuring and Documentation Considerations

#### 5.1 Registering or Filing Financing or Project Agreements

Financing or project agreements do not need to be registered or filed with any governmental authority. The parties usually opt to execute these agreements as public deeds before a public notary because this status provides an accelerated procedure for their execution with the judicial power and certainty as to their execution date, among other benefits.

Certain collateral agreements such as mortgages are required to be registered before the Peruvian Public Registry for their validity and enforceability. In the case of pledges or fiduciary transfers to a trust, such security will be valid and enforceable upon their execution; however, it will not be enforceable against third parties and therefore a priority right over the collateral granted as security cannot be assured until they are registered with the applicable Peruvian Public Registries, as registration provides erga omnes effect to the security interest created thereunder.

#### 5.2 Licence Required for Owning Land or Natural Resources

The Peruvian Constitution establishes that natural resources are the property of the GOP. However, concessions to extract such natural resources may be granted by the GOP provided certain conditions are met subject to industry-specific



regulations. The ownership by foreign investors of natural resources within 50 km of the Peruvian borders is permitted, as is a right to hold and exploit these types of concessions (although real estate property by foreign investors is limited, as described above).

### 5.3 Recognition of Agent and Trust Concepts

Agent and trust concepts are recognised in Peru. It is common practice that lenders appoint an onshore collateral agent to act on their behalf and for their benefit. Also, the trust is the preferred structure to create a security interest. However, trusts can be significantly more expensive than other security structures and will necessarily be administered by one of the authorised trustees, a small number of highly regulated entities. Mortgages or pledges may provide a cheaper alternative to a trust, but will provide a less expeditious foreclosure process.

### 5.4 Rules Governing the Priority of Competing Security Interests

In the cases of mortgages and pledges, competing security interests will be determined chronologically, meaning that the first security perfected will grant a better right than a security interest granted subsequently.

In general terms, subordination of debt agreements will be recognised by Peruvian courts. Normally, financing documents set forth the obligation of the project company to execute subordination agreements in respect to intercompany debt.

In the event of a winding-up proceeding, Peruvian bankruptcy law establishes a priority order among creditors; in this context, the enforceability of subordination of debt agreements may be contended by the competent authority for insolvency and bankruptcy proceedings. As an alternative to a subordination agreement, in case of bankruptcy, parties may opt to execute a conditional assignment of one lender's rights to collect from the project company (equivalent to the subordinated creditor), subject to the condition that if the project company enters into an insolvency or bankruptcy procedure, the assignee (equivalent to the senior lender) would collect monies to repay in full its credits and any excess would be returned to the assignor.

### 5.5 Requirements of Local Law

The PPP Law does not require that concessionaires (sponsors or special project companies) be incorporated in Peru; however, the bidding processes for all public projects carried out in the country have established a requirement that the concessionaire to be incorporated post-award be ultimately a Peruvian entity. On the other hand, there are no restrictions (neither de jure nor de facto) for the bidders and the sponsors to be foreign incorporated entities.

Project companies are typically incorporated under the form of a corporation (*sociedad anónima*) or closed corporation

(*sociedad anónima cerrada*), in any case with limited liability of the sponsors. The main difference between those two legal forms is the restriction on the transfer of shares. The Peruvian Company Law (*Ley General de Sociedades*) establishes that closed corporations have a mandatory right of first refusal when a shareholder intends to transfer its shares, and also provides for the possibility of not having a board of directors.

## 6. Bankruptcy and Insolvency

### 6.1 Availability and Practice of Company Reorganisation Procedures

Under Peruvian bankruptcy regulations, reorganisation procedures take place before an administrative authority (INDECOPI) and not before a jurisdictional authority. In this context, company reorganisation procedures for large companies under the Bankruptcy Law (*Ley General de Sistema Concursal*) have not been frequent, although during the 1990s several large constructing companies and former state-owned companies were reorganised.

When the insolvency proceeding is initiated at the request of the debtor, such company must prove that its cumulative losses are lesser than its subscribed social capital in order to opt for the company's reorganisation. On the other hand, when the procedure is initiated at the request of the creditors, the board of creditors must decide whether to start a reorganisation procedure or the dissolution and winding up of the company.

### 6.2 Commencement of Insolvency Processes Impacting Lender's Rights

Once the insolvency proceeding is commenced the company will be restricted from carrying out certain actions, such as the payment of undue obligations and the payment of due obligations not performed in the agreed form in the respective agreement, among others set forth in Article 19.3 of the Bankruptcy Law.

However, once the insolvency proceeding is published, the enforceability of all obligations of the debtor is suspended and a compensatory interest rate agreed upon by the board of creditors will apply. In this case, moratory interest will not accrue for the aforementioned obligations, nor will the capitalisation of interest be allowed.

### 6.3 Payment Order to Creditors on a Company's Insolvency

Unsecured credits are paid in the last order of preference on a company's insolvency. For further reference, the order of preference for credits in insolvency proceedings is the following:

- labour credits;

- secured credits up to the amount of the assets granted as security – such security interest must be registered in the applicable registry;
- tax credits to the GOP; and
- unsecured credits and the portion of secured credits in excess of the amount of the assets granted as security.

### 6.4 Risk Areas for Lenders

The main risk is that the enforceability of the lender's rights against a borrower which has entered into an insolvency proceeding will be limited. The lender's credit will be paid following:

- the terms of the restructuring plan, in case the board of creditors decides to reorganise the company;
- the terms of the dissolution and winding-up agreement, in case the board of creditors decides to liquidate the assets of the company; or
- the terms of the global refinancing agreement, in case the company filed for a voluntary insolvency proceeding.

Limitations in respect to the borrower will not affect the lender's ability to enforce a security interest granted by a third-party security provider securing the borrower's obligations to the lender.

In case a security provider enters into an insolvency proceeding, the lender will retain its right to enforce the security interest created on the security provider's assets and, in the event of winding up, will benefit from the proceeds of its transfer.

To prevent insolvency risks, lenders may opt to receive a security interest in the form of a trust, as the assets subject to the fiduciary assignment to the trust are excluded from the debtor's assets for insolvency purposes.

### 6.5 Entities Excluded from Bankruptcy Proceedings

Financial institutions regulated by Banking and Financial Institutions Law are excluded from bankruptcy proceedings regulated under the Bankruptcy Law. Insolvency proceedings of these institutions are regulated by a specific chapter of the Banking and Financial Institutions Law.

## 7. Insurances

### 7.1 Restrictions, Controls, Fees and/or Taxes on Insurance Policies

The only restrictions, controls, fees and/or taxes on insurance policies are the applicable value added tax. Project documents may establish certain requirements on the ratings of the insurance company, but there are no regulatory restrictions on insurance policies.

### 7.2 Payable Insurance Policies over Project Assets to Foreign Creditors

Insurance proceeds over project assets may be payable to foreign creditors, provided that the project documents do not contemplate that the compensation shall be used by the owner to replace the damaged or destroyed assets.

## 8. Tax

### 8.1 Payments to Lenders Subject to Withholding Tax

Payment of interest is subject to withholding of Peruvian income tax at a rate of 4.99%, provided that the following conditions are met:

- the interest rate does not exceed the equivalent of LIBOR plus 7% (whereas any excess thereof would be subject to income tax at a rate of 30%);
- disbursed funds have been remitted to Peru through an entity of the Peruvian banking system; and
- lender and borrower are not deemed to be related parties.

If the loan to be granted by a foreign lender does not meet these conditions, the applicable withholding tax rate is 30%.

### 8.2 Taxes, Duties, Charges or Tax Considerations Relevant to Lenders

Value added tax at a rate of 18% will be applicable when the foreign lender does not qualify as a banking or financial institution in its jurisdiction. In these cases, the value added tax will be self-assessed, declared and paid by the Peruvian-domiciled borrower.

Financial transactions tax applies on any debit or credit in local bank accounts, either in local or foreign currency, at a 0.005% rate. The taxpayer of the financial transactions tax is the holder of the corresponding bank account, which will be entitled to deduct such tax as an expense for income tax purposes.

### 8.3 Usury Laws or Other Rules Limiting the Amount of Interest Charged

The Peruvian Central Bank provides the maximum applicable interest rates – compensatory or moratory – for loan operations (which are updated on a daily basis) as provided by Article 1243 of the Peruvian Civil Code. However, it should be noted that institutions of the Peruvian financial system are not limited by these maximum rates; this exception does not apply to foreign lenders.

It should be noted that usury is a criminal offence pursuant to Article 214 of the Peruvian Criminal Code.

## 9. Applicable Law

### 9.1 Law Typically Governing Project Agreements

Project agreements in connection with PPPs are usually governed by Peruvian law. In the case of private projects, the choice of law is negotiated between the parties.

### 9.2 Law Typically Governing Financing Agreements

Financing agreements are normally governed by the law chosen by the financial institution acting as lender, mainly the laws of the State of New York.

### 9.3 Matters Typically Governed by Domestic Law

Security agreements such as pledges, mortgages and trusts over assets located in Peru are typically governed by Peruvian law – in the case of mortgages over real estate located in Peru, Peruvian law will be mandatory – in order to expedite foreclosure procedures.

**Payet, Rey, Cauvi, Pérez Abogados**

Victor A. Belaunde 147  
Torre 3, Piso 12  
Centro Empresarial Real  
San Isidro  
Lima  
Peru



Tel: +51 1 6123202  
Email: [lexmail@prc.com.pe](mailto:lexmail@prc.com.pe)  
Web: [www.prc.com.pe](http://www.prc.com.pe)

