

Peru

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Regulation and classification of financial services

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Lima

The transformation of the old Peruvian financial system into a modern one occurred at the beginning of the nineties. This modernisation allowed Peru to surpass the economic crisis that strongly impacted the Peruvian economy as well as other Latin-American countries.

The General Law of the Financial and Insurance Systems, enacted in 1996, rules the functioning of the financial system and establishes the capacity of the Superintendence of Banking, Insurance and Private Funds Administrators (SBS) to supervise and control financial entities.

Banking system

The General Financial Law put into effect the recommendations of the Basel Committee on Banking Supervision, establishing limits based in the patrimony of the bank, as well as enforcing other prudential regulations. The Law incorporates some principles that must be known in order to understand the function of the banking system:

- *Treatment of foreign investment:* foreign investment receives the same treatment as any local investment.
- *No participation of the state in the financial system:* with the exception of three entities, the financial system is integrated only by privately owned capital. These three state-owned entities are Corporación Financiera de Desarrollo (a second-floor development bank), Banco de la Nación (the financial agent of the state) and Banco Agropecuario (the development bank for agriculture).
- *Prohibition of discriminatory treatment:* it is forbidden to apply different treatment to: (i) companies of a similar nature; (ii) com-

panies of a different nature but concerning the same type of transactions; (iii) companies established locally with respect to similar foreign companies; and (iv) requirements for obtaining loans for Peruvian persons or corporations with respect to foreign persons or corporations.

- *Freedom to assign loans to any economic sector:* financial corporations are free to assign loans to whoever they consider, within the limits imposed by law and respecting criteria for diversifying risk.
- *Freedom to fix interest rates, commissions and charges:* financial corporations are free to fix the interest rates applicable to their active and passive transactions, as well as to determine the commissions and charges that must be paid by their clients for the services they receive. The only requirement is to inform their clients of those rates, commissions and other charges.

The banking system is divided into three groups: multi-business companies, specialised corporations and investment banks.

Multi-business companies

These companies can be banking or financial institutions; municipal savings and loans corporations or popular finance entities; small businesses or micro-enterprise development entities; savings and loans associations authorised to received public deposits; or rural savings and loans houses.

The General Financial Law allows banking institutions to engage in a large range of credit transactions as well as to invest in securities. Banks are forbidden to engage in other operations not specifically established in the General Financial Law or otherwise authorised by the SBS. Branches of foreign banks authorised by the SBS are allowed to engage in the same transactions as Peruvian banks and are subject to the same duties and obligations.

Differences among multi-business companies are due to the types of operations they are

allowed to engage in; while banks are authorised to engage in all the transactions established in article 221 of the General Financial Law, the other types of multi-business company are authorised to engage in just some of them. To be permitted to engage in other type of transactions, they must fulfil minimum capital and risk-management requirements.

Specialised corporations

These can be real-estate capitalisation companies; leasing corporations; factoring corporations; surety and bonding corporations; or trust companies.

Specialised corporations are authorised to offer just some of the services that banks render and all of them are related to the nature of the type of corporation.

Investment banks

Investment banks are authorised to render financial advisory services and to value corporations, as well to realise investments in Peru or abroad and to structure operations regarding the issuance of securities. They are not permitted to receive deposits or to give loans of any type.

Apart from multi-business companies, specialised corporations and investment banks, the General Financial Law also regulates other companies that offer services to financial corporations, including general bonded warehouses; transport, custody and specie management companies; debit and credit card companies; exchange services companies; and fund transfer corporations.

Banking and capital markets

Recommended firms	
Tier 1	Estudio Echeconpar Miranda & Amado Rodrigo Elías & Medrano
Tier 2	Muñiz Ramírez Pérez-Taiman & Luna-Victoria Payet Rey Cauvi Rebaza Alcázar & De Las Casas Rubio Leguía Normand & Asociados
Tier 3	Estudio Aurelio García Sayán Hernández & Cía Rosselló Abogados
Tier 4	Estudio Grau Estudio Olaechea

Mergers and acquisitions

Recommended firms	
Tier 1	Estudio Echeconpar Rodrigo Elías & Medrano
Tier 2	Miranda & Amado Muñiz Ramírez Pérez-Taiman & Luna-Victoria Payet Rey Cauvi Rebaza Alcázar & De Las Casas
Tier 3	Estudio Grau Hernández & Cía Rubio Leguía Normand & Asociados
Tier 4	Estudio Olaechea

Project finance

Recommended firms	
Tier 1	Estudio Echeconpar Muñiz Ramírez Pérez-Taiman & Luna-Victoria Rodrigo Elías & Medrano
Tier 2	Estudio Aurelio García Sayán Miranda & Amado Payet Rey Cauvi Rosselló Abogados Rubio Leguía Normand & Asociados
Tier 3	Estudio Olaechea Hernández & Cía

Peru has experienced seven years of sustained growth, and the market looks to remain bullish. The country is experiencing unprecedented growth in M&A activity. Consolidation is occurring in a number of traditional industries, including mining, gas, retail, insurance, agriculture, fishing and financial services as well as developing fields like healthcare. Regional players are entering the market, with groups from Mexico, Colombia and Brazil eager to make inroads in the growing Peruvian economy.

Recently, a mix of international and local private-equity funds have arrived in Peru. These funds traditionally acquire minority positions in retail, infrastructure, health services or logistical companies. Peruvian pension funds are also becoming important players in the market. These pension funds provide a certain amount of captive liquidity for the country. Under Peruvian law, the funds can only invest a certain amount abroad, and the rest must be reinvested inside Peru.

The capital markets have reacted to the lack of investment alternatives for these funds, and there is an increase in structured securities designed to be attractive to them. The banking regulator has become more creative as well, and has allowed any placements that foreign entities make on local markets to be classified as local securities. Essentially, these funds can stay within the bounds of financial regulations by investing in nominally Peruvian entities but still diversify their portfolio.

Peru needs continued investment in infrastructure, which was stalled under the previous administration but appears to be back on track again with new government concessions in energy, roads and gas. Private companies have been eager to enter the mining industry in particular, given the high price of minerals on the international markets.

There is proposed legislation to incentivise private companies to become involved in PPPs. The government is interested in hastening the development of many of these projects. One way to speed up the process is to allow the private sector to identify projects and notify the government rather than wait for the government to begin calling for bids. A number of successful private initiatives in gas, water and electricity have begun this way.

For the past year, the government has largely focused on passing the free-trade agreement with the US, and has not devoted much energy to granting concessions. Many of the most important government officials were too busy negotiating with the US to oversee project finance. Now that the agreement has been approved, lawyers in Peru are confident that concessions will be granted more quickly and frequently.

Estudio Aurelio García Sayan

Estudio Aurelio García Sayan has been very involved in the M&A trend that is sweeping Peru. Lawyers on the other side of the table are impressed with the firm's talent. "Luis Gastañeta is a lawyer that the other side enjoys working with. He is a dealmaker, not a deal breaker. He knows which issues are important and which are not," says one rival when of the corporate partner.

Luis Gastañeta led the team that represented the purchaser, Chilean food and drug retailer Cencosud, in its \$600 million purchase of Grupo de Supermercados Wong, the largest supermarket group in Peru. The acquisition included 23 retail chains and 17 plots of land for development of future commercial projects owned by Wong in Peru.

Estudio Aurelio is devoting itself to clients that are involved in the burgeoning project finance market in Peru. In July 2007, the firm represented Petro-tech Peruana when it successfully participated in a bidding contest for two separate E&P Hydrocarbon contracts. The firm helped with the negotiation and execution of these contracts, valued at \$97 million.

Leading lawyers

Luis Gastañeta
Alberto Varillas

Estudio Echeconpar

Estudio Echeconpar is one of only two firms to be ranked in the top tier in each practice area. Competitors note that the quality of lawyering at the firm is high. A number of partners at Estudio Echeconpar are ex-members of the government, which only adds to the firm's prestige.

Estudio Echeconpar was counsel in the largest ever direct foreign investment in Peru's history, when in June 2008 \$2.3 billion loans were granted to finance Latin America's first liquefied natural gas (LNG) export project. Estudio Echeconpar, along with Rosselló Abogados, acted as counsel to the lenders, which included Citibank, Société Générale, BBVA, Calyon and ING, among others. The syndicated financing arrangements also includes record sums from IADB and International Finance Corporation; the IFC loan is the largest-ever made in Latin America. The financing is destined for the Peru LNG plant, the largest private-sector project in Peru's history, with a total value of \$3.8 billion.

The firm acted as counsel to banks again when in June 2008, led by Javier Castro, it advised Banco de Crédito de Perú and Scotiabank Perú in their grant of a loan facility for \$74 million to Peruvian Tecnológica de

Alimento, the world's largest fishmeal producer. The loan will be used to refinance Tecnológica de Alimento's acquisition of nine fishing vessels and three fishmeal processing plants.

The fishing industry in Peru is very healthy, and Estudio Echecopar has also helped Pesquera Exalmar to secure an \$80 million loan from a syndicate of international banks. The company intends to use the loan to purchase a 50% interest in another fishing enterprise, Corporación del Mar, and to refinance its existing debt.

Leading lawyers

Javier Castro Salinas
Liliana Espinosa Reboa
Ismael Noya de la Piedra
Jorge Ossio Gargurevich

Miranda & Amado

Miranda & Amado, although it is a relatively young firm, has been growing in size and in reputation. A rival notes the firm's strength as a dynamic and aggressive practice: "They are a great firm for financial transactions because they are young, active, and understand the way a deal should work in modern times."

Clients also praise the firm. "Miranda & Amado has been involved in some very important projects for us," says one. "They are particularly good at advising on regulatory aspects of deals, and they are responsive and dedicated."

Miranda & Amado has been busy keeping up with the activity on the Peruvian debt markets. The firm often assists leading financial institutions in bringing these offerings to market. A team led by Juan Luis Avendaño advised Morgan Stanley, acting as sole arranger and initial purchaser of Banco de Crédito del Perú's \$160 million subordinated bond offering on the US and European institutional markets. This offering was very important for the bank, which used the proceeds to increase its capital base.

The firm is particularly active in the energy sector, and has advised on some important consolidations in this market. The firm acted as local counsel for Ashmore Energy in its acquisition of PSEG's electricity assets in Chile and Peru, which include a 38% ownership in Luz del Sur, one of the two companies holding concessions for electricity distribution for Lima. The firm later represented Suez Energy in its sale of Cálidda, the company that owned the concession for gas distribution in Lima and Callao, to Ashmore Energy in exchange for a power plant in Panama.

Leading lawyers

José Daniel Amado

Luis Marcelo de Bernardis
Roberto MacLean

Muñiz Ramírez Pérez-Taiman & Luna-Victoria

Muñiz Ramírez Pérez-Taiman & Luna-Victoria is much larger than any other firm in Peru, and peers remark that the firm has been very successful despite the fact it has had some difficulty since losing the heads of its finance and M&A departments. Competitors observe that the firm's strength lies in day-to-day advisement for its clients rather than in handling large, complex transactions.

The efforts of Jorge Pérez Taiman - who has developed an expertise in the hydrocarbons industry - and Sergio Oquendo have made the firm's project finance team one of the dominant players in the Peruvian market. Muñiz Ramírez was active in the Camisea project, which is one of the largest project finance transactions in the last decade. The firm has represented Transportadora de Gas del Perú in various stages of this project.

In September 2007, Transportadora de Gas del Perú acted as the borrower of a \$50 million loan facility, the proceeds of which will finance the expansion of the second stage of the pipeline for the Camisea project. Later, in December 2007, Transportadora de Gas del Perú issued \$400 million corporate bonds in order to finance the same development.

Most recently, in May 2008, the firm advised Kuntur Transportadora de Gas in developing a gas transportation project, which involves the construction of a gas pipeline from the site where the Camisea natural gas reserves are located, in the lower Amazon, to the coast of Peru. The project involves an initial investment of \$1.2 billion.

Leading lawyers

Jorge Muñiz Ziches
Mauricio Olaya Nohra
Sergio Oquendo Heraud
Jorge Pérez-Taiman

Payet Rey Cauvi

Payet Rey Cauvi is one of the smaller firms on the list, but competitors note that the firm is becoming increasingly active in the market. The firm's banking and capital markets departments garner the most respect among peers, and its lawyers regularly address complex legal challenges in these areas.

In the securities market, Eduardo Vega counselled Red de Energía del Perú, a subsidiary of Interconexión Eléctrica, a Colombian company, in the registration of its second bond programme on the Lima Stock Exchange, worth \$150 million. Under Juan

Antonio Egüez, the firm also represented América Móvil in the registration of its first corporate bond programme in the Peruvian securities market for \$200 million.

Additionally, the firm is counsel to a number of prominent banks and financial institutions, and has represented these institutions in some of the most significant development projects in the country. For example, the firm advises Banco de Crédito del Perú on the financing of the first stage of the Olmos irrigation project. Additionally, the firm is representing BBVA Banco Continental in the financing of the concessionaire of Peru's northern regional airports.

Leading lawyers

Juan José Cauvi
Juan Antonio Egüez
José Antonio Payet
Eduardo Vega

Rebaza Alcazár & De Las Casas

"Rebaza Alcazár & De Las Casas is a very aggressive new law firm," says a rival. Competitors praise the name partners: "Alberto Rebaza is a very good lawyer and is very imaginative, and Gonzalo de las Casas is one of the best lawyers in restructuring and insolvency in Peru."

The firm is very active representing clients in the banking and finance sector. In July 2007, the firm advised Scotiabank on its \$25 million financing for the expansion of the mining operations of Compañía Minera Poderosa. Under Rafael Alcazár, the firm represented the seller, Banco del Trabajo, of a mortgage portfolio comprising more than 2,500 loans to Banco Internacional del Perú-Interbank for \$60 million.

The firm has also advised numerous borrowers, not only lending institutions. In December 2007, the firm represented PlusPetrol in its obtaining a syndicated loan for \$170 million from a group of banks led by Standard Bank.

The firm has been gaining experience in M&A as more and more deals have been sweeping through Peru. In May 2008, the firm represented the target company, Empremédica, in Banmédica's acquisition of 55% of its shares.

Leading lawyers

Rafael Alcazár
Juan José Cárdenas
Gonzalo de las Casas
Alberto Rebaza

Rodrigo Elías & Medrano

Rodrigo Elías & Medrano is ranked in the first tier in each practice area. “Rodrigo is one of the most important firms in Peru without a doubt,” says a client of the firm. “They provide common-sense practical advice and they are very well connected.”

Rivals equally recognise the firm’s prominence. Says one: “There is no doubt that Rodrigo Elías is deserving of its position as a blue-chip firm.”

In August 2007, the firm represented Freeport McMoran in its tender offer for a Peruvian copper mine. Under Peruvian law, Freeport McMoran was required to purchase 25% of the shares issued in the Cerro Verde mine for \$1.25 billion as part of the company’s global takeover of the mine’s owner, Phelps Dodge Mining, for \$25 billion. The offer was made through the Peruvian stock exchange.

The firm has represented a number of other companies in the fast-consolidating mining industry. In January 2008, the firm represented China Minmetals and Jiangxi Copper in their acquisition of Northern Peru Copper for \$446 million.

Rodrigo Elías has a strong tradition of successfully representing companies that bid for government concessions; for example, it represented Dubai Ports World in the winning bid to develop the deep-water ports at Callao. More recently, in December 2007, the firm represented Banco de Crédito del Perú as arranger for the \$400 million bond financing by Transportadora de Gas del Perú.

Leading lawyers

Jean Paul Chabaneix
Humberto Medrano
Diego Peschiera
Luis Carlos Rodrigo Prado
Julio Salas
Gino Sangalli