

ILPA INVESTOR DELEGATION

Investing in Peru

Rebaza, Alcázar & De Las Casas

A b o g a d o s F i n a n c i e r o s

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PERUVIAN LEGAL FRAMEWORK

- Rule of law
- Non discrimination between domestic and foreign investors
- Settlement of disputes: choice of courts or arbitration (domestic or international)
- No currency or exchange controls or restrictions
- Free remittance of dividends abroad (no need for Central Bank or other governmental authorization)
- Investors-friendly companies legal framework: General Companies Act
- Tax Stability Agreements

RELEVANT LEGAL ISSUES IN M&A TRANSACTIONS

- No restrictions or registration needed for foreign investors to purchase a controlling or minority stake in a Peruvian company
- No antitrust prior approval is required (except in energy industry)
- Mandatory tender offer to minority shareholders if target company is listed in the Lima Stock Exchange (LSE)
- Government approval is required for acquisition of financial companies (banks, insurance companies, pension funds)

RELEVANT LEGAL ISSUES IN M&A TRANSACTIONS (CONT.)

- Legal documentation in M&A transactions in Peru is similar to NY/UK deals
- Due diligence (financial/legal/operational): more complex if the target is not listed in the LSE
- Stock Purchase Agreement (R&W, claims)
- Shareholders Agreement (voting majority, preemptive rights, right of first refusal, tag along right, drag along right)
- Tax analysis for structuring a transaction is key
- Settlement of disputes: arbitration is advisable

RELEVANT TAX MATTERS IN M&A TRANSACTIONS

- General Income Tax rate is 30%
- Dividend distribution is subject to a 4.1% withholding tax when paid to foreign companies or domestic/foreign individuals
- A Capital Gains Tax (CGT) is levied on sales of shares of Peruvian companies at the following rates:
 - 30% for foreign companies (but reduced to 5% if the target company is listed in the LSE)
 - 30% for domestic companies
 - 5% for individuals (foreign or domestic)

RELEVANT TAX MATTERS IN M&A TRANSACTIONS (CONT.)

- Since 2011, the Capital Gains Tax applies is levied also on indirect transfers (e.g. transfer of holding or controlling company incorporated abroad, which in turn holds shares of a Peruvian company)

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