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Our services based on loyalty, integrity and professionalism have allowed a relationship of trust and closeness with our customers, creating long-term relationships and positioning ourselves as strategic partners in their daily activities and near-by development. This aspect made it necessary to expand our staff and locate important centers of economic development within the Peruvian government. Nowadays, we have offices in the cities of Piura and Huaura.

The members of Laos, Aguilar, Limas & Associates Lawyers Firm are graduated from the most prestigious universities of the country and have expertise in foreign institutions. They have also participated in transactions on investment projects, allowing the financing, implementation and operation of such projects. In fact, the Lawyer Firm participates as advisor of the most important mining project located in the south of Peru, directly linked to corporate and electricity area.

According to the economic development in Peru, our staff is trained to provide investment schemes and sustainable development, enabling a social, environmental and economic integration. These aspects have enabled us to build and be part of alliances between communities farmers and foreign investors, especially in the Northern region of Peru.

Our professional services cover all aspects of the law but the most important are the Labor Law and Social Security Area being the most representative and prestigious of Peru. The members have been involved in important negotiations contributing to the development of agreements that generated integration between investor and employee.

The experience, knowledge, credibility, integrity and loyalty of the members of ILP Global Laos, Aguilar, Limas & Associates Lawyers offer a personalized and professional service with the highest quality, ensuring the success of the transactions and activities of our customers, allowing the increasing of profits with efficiency schemes and excellent standards of risks reduction to the investors.

In addition, our firm is member of E-Jure (www.e-iure.com), a network of international firms that associate about 25 lawyers firms from European and American countries.

Our firm also is part of Global ILP (International Lawyer Partners) (www.ilpglobal.com). It is comprised of five law firms that share and maintain a philosophy, project and common working methodology. Our firms in Chile, Spain, Ecuador, Mexico and Peru have a shared vision of the importance of satisfying the needs of customers in different jurisdictions under similar procedures with the same quality of service.

→ Corporate Law

In accordance to paragraph 13 of Article 2° of the Political Constitution of Peru: *“Everyone has the right: (...) to associate and to establish foundations and diverse forms of nonprofit juridical organizations, without prior authorization and in accordance with the law; they cannot be resolved by administrative order (...)”*.

In this manner, the maximum regulation establishes the right for any person to be able to organize and to attain their aims; that is why the Constitution Tribune has defined the right to associate in the following manner: *“(...) it is specified in the existence of legal entities, to be free and capable to exercise their rights and incur obligations, with the aim of being able to autonomously respond due to their social development, in order to achieve the satisfaction of a common objective or interest, and not always being bound to making profits.” (Exp. N° 02243-2010-PA/TC).*

While there is no definition for a legal entity within the Peruvian Civil Code, we are able to state the main constituent elements (Gonzales Barrón, Gunther. Introduction to Registration and Notary Rights. Second Edition. Lima. Jurista Editores, 2008. pág. 435), namely:

- **GROUP OF INDIVIDUALS:** two member minimum, except in respect to an Individual Company of Limited Liability.
- **NET WORTH:** is necessary as long as the legal entities respond to their own obligations.
- **AIM:** has as a purpose of being able to fulfill its social objectives
- **ACT OF RECOGNITION OF THE PERSONALITY:** In our country, registration is a necessary act and through which the legal entities become a central allocation of rights and duties.

On this last point, in accordance with Article 77° of the Civil Code: *“The existence of a private legal entity starts at the point of registration in the respective registry, unless specified differently under law. The efficiency of events held in the name of the legal entity prior to registration remains subject to this requirement and its ratification within the three months after being registered.”*

Types of Legal Entities

In Peru, various types of legal entities are regulated, among which, are the following:

■ **LIMIT LIABILITY COMPANY:** In accordance to Article 1° of the Legislative Decree 21621: *“It is a private legal entity, constituted by single judge will, with its own patrimony other than their Holder, which is constituted for the exclusive development of economic activities of Small Businesses under Legislative Decree N° 21435”.*

Among its most important characteristics is the fact that its capital consist of shares, that are property of a sole member; consequently, this kind of legal entity does not have the collectivity requisite since its purpose is precisely to constitute under the command of a sole member known as the holder, who is not liable for the obligations of this collectivity requisite; therefore, limited liability exists.

These kind of legal entities are largely used in our country due to the existing promotion for the formation and establishment of small businesses, which adopt this form of organization as they are most suitable in regards to their characteristics and needs.

■ **PARTNERSHIPS:** Through Act N° 26887 – General Corporate Law (LGS) governs all kinds of existing companies, as well as expressly indicating the economic purpose for each, leaving behind the antiquated distinction between commercial and civil partnerships.

Accordingly, Article 1° of the LGS indicates the following: *“Those who constitute the Partnership, agree to provide goods or services for the joint exercise of economic activities”.* Among the different kinds of companies that should be obligatorily undertaken if their objective is to form a partnership, are the following:

- *Corporation:* It is a typical limited liability company that requires for its development, capital of medium to large proportions. Among its most exceptional characteristics is the fact that it can be formed simultaneously or through third party tenders (Articles 53 and 56 of the LGS). Likewise, there may be various classes of shares, with or without the right to vote and convertible bonds issued. The right of first refusal is not set, so that the transfer can be performed without some kind of impediment unless agreed otherwise; what is regulated is the preferential subscription right, because when their capital increases, each shareholder has the possibility of maintaining their share and proportion.

On the other hand, the Board of Directors and Management are the entities that are responsible for the administration and development of the corporate objective. Under the present embodiment, the shareholders could only be excluded by objective causes, which says, those that are not concerning personal behaviors or circumstances, unless agreed otherwise.

- *Private Corporation*: It is a partnership that is focused more for small to medium sized businesses, due to the fact that there can not be more than twenty shareholders and each are restricted from selling shares on the Stock Exchange (Article 234^o of the LGS). The right of first refusal and the preferential subscription right are relevant under this kind of embodiment since there is no transferability, unless agreed otherwise. As for corporate entities, it is established that the board of directors is optional; therefore, the General Manager can assume all of its obligations (Article 248^o of the LGS).

- *Publicly Held Corporation*: A company that has the objective of obtaining a large amount of capital by means of income from shareholders as per Article 249^o of the LGS: *"It is a publicly held corporation when one or more of the following conditions are met:*

1. *Has made an initial offer of its shares or convertible bond issues;*
2. *has more than 750 shareholders;*
3. *More than 35% of its stock belongs to 175 or more shareholders, without taking into account those single shareholders that do not reach two per thousand of the capital or exceed 5% of the capital;*
4. *It is constituted as such; or*
5. *All of the shareholders with voting rights unanimously approve the adoption of said regiment.*

Among the most important characteristics, is the fact that it is plainly noted that its shares must be registered in the Public Registry of the Stock Exchange; therefore, are subject to the control of the National Commission of Supervision of Businesses and Securities – CONASEV; consequently, share transferability is not restricted. Due to its disintegration of shareholders, the quorum and majority for the adoption of qualified agreements is less than the other embodiments and can even be entered into agreements with third party entity shareholders (Article 257^o of the LGS).

- *Commercial Corporation of Limited Liability*: This type of embodiment is structured on being a very private corporation; therefore, the intuition person stands out but with limited liability to the partners; thus their capital is divided into shares that prevent their incorporation into transmissibility and prohibits them from being incorporated into securities (Article 283^o of the LGS). As in a private corporation, the number of partners must not exceed twenty. In regards to its administration, Article 287 of the legislation establishes that the corporate administration shall be under the directorship of the General Manager since there is no Board of Directors as a social embodiment.

- *Group Companies*: It is the embodiment where the personal element prevails and its partners respond in a manner that is jointly and unlimited to the social obligations. In accordance to Article 266° of the LGS, the trade name is integrated by the names of one, some or all of the partners.

- *Civil Societies*: In accordance to Article 295° of the LGS, it is constituted with the objective of having an economic characteristic, which is implemented by the personal exercise of a profession, craft, skill, practice or another type of personal activity by an individual, individual or all of the partners. In accordance to Article 296° of the LGS, the trade name is integrated with the name of one or more partners. The capital will consist of shares, which must be paid in full at the onset of the articles of incorporation (Article 297° of the LGS).

It can be separated in two parts; on one hand, there is the Ordinary Civil Society, where the partners are liable for the debts either personally or supplementary with benefit of discussion in an agreed upon share or based on their contributions and on the other hand, the Civil Society of Limited Liability, where the partners can not exceed more than 30 and are not responsible for the social obligations.

■ ASSOCIATION: The association is a private legal entity that is mandated under the Civil Code norms. Article 80° of that legal provision, defines it as: “(...) a stable organization of individuals or legal entities, or from both, that through a common activity have a non profitable objective”.

In sum, it is one of the ways the order offers people to exercise their right to associate, which is enshrined in Article 2° paragraph 13 of the Political Constitution of Peru. The association, like any other legal entity, has a particular structure that allows it to attain its objectives throughout its existence. In that sense, it is represented by two principal embodiments: The General Assembly and the Board of Directors.

While the General Assembly is the highest authority of the association, the Board of Directors is responsible of carrying out the agreements that have been established and it is the one that reflects the will of the legal entity before third parties.

■ FOUNDATIONS: In accordance to Article 99° of the Civil Code, a foundation is defined in the following manner: “(...) a nonprofit organization instituted via the effects of one or more assets in order to attain objectives of religious character, assistance, cultural or other social interests.”

In that sense, a foundation is also an exception to the rule due to the fact that the plurality of members is not necessary and can even be construed by testimony. For its constitution, it is important that it complies with the formality of being construed by a Public Deed (Article 100° of the Civil Code). Likewise, it is important to mention that the constituted act should indicate its objective and the asset or assets that affect it.

It is important to note that these institutions are under the supervision and control of the Surveillance Council of the Foundations, which is an embodiment that is responsible for verifying and addressing the deficiencies that would normally incur in a constitutive act in respect to necessary acts such as the naming of administrators, domicile or the denomination as well as having a broad range of powers, thus it can solicit a dissolution when the objective is unobtainable. This control is primarily set in order to prevent that these types of legal entities be subject to arbitrary or fraudulent acts.

■ **COMMITTEE:** It is an organization of legal entities or individual dedicated to the public collection of contributions for an altruistic purpose, as per Article 111^o of the Civil Code. For its registration, a Public Deed is not necessary; therefore, private documents with notarized signatures are sufficient.

In the present case, the Public Ministry by its own initiative or ex parte is responsible for monitoring, in order for the collected contributions by the Committee be conserved and destined towards the objective proposal; thus members of the committee or Board of Directors have the duty to denounce all agreements or acts that violate the legal dispositions or bylaws.

Dispute Resolution Mechanisms

In accordance to Article 139^o of the Political Constitution of Peru, the following is indicated: *"They are rights and principles of the judicial function: (1) The unity and exclusiveness of the judicial function. It does not exist and independent jurisdiction cannot be established, except under circumstances that military or arbitration [...]"*

Within the Peruvian constitutional definition, there exist two mechanisms that are for bringing about solutions to private controversies that derive from contractual origins or when there is not an obligation from an extra contractual origin.

- The Judicial Branch
- Extrajudicial Dispute Resolution

Conflict Resolution in Private Dispute Processes

For these purposes, the Code of Civil Procedures establishes two kinds of processes, Litigious and Non Litigious, and in order to guarantee the efficiency of the decisions to be taken, the "interim process" as it is called is regulated. Thus they are first characterized by their reasons for litigation and in the second their absence is paramount. For the resolution of controversies that derive from commercial titles or special titles the Code of Civil Procedures has created the Implementation Process. Henceforth, we have:

■ **LITIGIOUS PROCEEDINGS:** The Code of Civil Procedures regulates it in the Fifth Section and it contains the following Processes:

- *Awareness process.* Regulated in Article 475^o and following the Code of Civil Procedures: The processes shown here are those that: i) Do not have a procedural route, they are not assigned by law to other jurisdictions and in addition due to their nature or complexity of claim, the Judge considers their proceedings to be meritorious; ii) The estimated net worth of the petition is more than one thousand Procedure Reference Units (A Procedure Reference Unit (URP) is equivalent to 10% of a Tributary Tax Unit (UIT), for the year 2012, the URP is equivalent to S/3.65 and each year can vary depending on the changes in the UIT); iii) They are insignificant in monetary value or there is doubt in regards to their amount and as long as the Judge deems their provenance to be meritorious; iv) the plaintiff takes into consideration that the only matter subject under discussion would be the right; and the others are to be stipulated by the Law.

Upon filing the suit, there are 30 days to answer and counterclaim, should that be the case. After concluding the Evidentiary Hearing, there are 50 days to emit the respective Ruling. This ruling can be appealed within the term of ten calendar days.

- *Abbreviated procedures.* Regulated in Articles 486^o and following the Code of Civil Procedures: The processes shown here are those that: i) Retraction; ii) Supplemental Title, application of adverse possession and rectification of areas or boundaries; iii) Civil liabilities of the Judges; iv) Expropriation; v) Third-party; vi) Objection to the action or administrative decision; vii) The claim petition has an estimated net worth that exceeds one hundred and up to one thousand Procedure Reference Units; viii) The ones without a procedural route of their own, have an insignificant monetary value or there is doubt in regards to their amount or due to the nature of their claim, the judge considers their employment meritorious; and , ix) The law stipulates the rest.

Upon filing the suit, there are 10 days to answer and counterclaim, in certain cases. After concluding the Evidentiary Hearing, there are 25 days to emit the respective Ruling. This ruling can be appealed within the term of five calendar days.

- *Summary proceedings.* Regulated in Article 546^o and following the Code of Civil Procedures: The processes shown here are those that: i) Diet; ii) Conventional separation and subsequent divorce; iii) Interdiction; iv) Evictions; v) Injunctions; vi) The ones without a procedural route of their own and have an insignificant monetary value or there is doubt in regards to their amount or due to the urgency of jurisdictional protection, the judge considers their employment meritorious; vii) Their net worth does not exceed one hundred Procedure Reference Units; and, viii) The law stipulates the rest.

Upon filing the suit, there are 05 days to answer and counterclaim, in certain cases. After concluding the Evidentiary Hearing, there are 10 days to emit the respective Ruling. This ruling can be appealed within the term of 03 calendar days.

■ **NON LITIGIOUS PROCEEDINGS:** Article 749^o of the Code of Civil Procedures, lists the matter which may be subject to non litigious proceedings, such as: i) Inventory; ii) Judicial administration of assets; iii) Adoption; iv) Authorization to provide rights of incapability; v) Declaration of disappearance, absence or the presumption of death; vi) Family assets; vii) Offer of payment and consignment; viii) Testament verification; ix) Registration and rectification of certificate; x) Intestate succession, xi) Recognition of judicial decisions and arbitral awards decreed abroad; xii) The solicitation that due to the petition of the interested party and by the decision of the Judge, are devoid of contention; and xiii) The law stipulates the rest.

■ **IMPLEMENTATION PROCESS:** It is regulated by Articles 688^o and the following from the Code of Civil Procedure. The rule is quite clear about this, because it only states that it can promote implementation that is enforceable under-judicial or extra judicial as applicable. The following are executive titles:

- Final judicial decisions;
- Final arbitration adjudications;
- The Settlement Acts in accordance to the Law;
- The Securities that confer the action will change, duly protested or with the record of the substitute form of the respective protest; or where appropriate, with precedence of said protest or record, in accordance to what was provided in the law of matter;
- The certificate of registration and title issued by the Institution of Compensation and Securities Clearing, in the case of securities represented by book entry, by the rights that give rise to the exchange will change, in accordance to what is provided in the law of matter, as
- The foreseen test that contains a recognized private document;
- The certified copy of the foreseen Test that contains an absolution of positions, that is either express or not factious;
- The document containing an extrajudicial transaction;
- The default document of the rental income, provided that the contractual relationship is accredited instrumentally;
- The testimony is of public scripture;
- Other titles with enforceable measures as provided by law.

Upon the filing of the lawsuit, there is a 05 days response period, there is no counterclaim. After concluding the Evidentiary Hearing, there is a 05 day waiting period respectively for the judgment to be issued. This judgment may be appealed within 05 calendar days.

■ **PRECAUTIONARY PROCESSES:** It is defined as all legitimate interferences of the authority in regards to the fundamental rights and is put in place as a means to achieve the purposes of the process. Precautionary measures are regulated in Articles 608^o and the following from the Code of Civil Procedure.

Article 610^o, states that whoever asks for the injunction must:

- Be exposing the foundations of their interim claim;
- Signalize its form;

- Indicate if applicable, the assets on which must rest the measure and the amount of involvement;
- Offer a counter preventive measure; and
- Must designate the authority for corresponding judicial assistance, if applicable. In the case of an individual person, identification will be credited by attaching a certified copy of their personal identity document.

Chapter II of Title IV, Section Five, mentions specific precautionary measures, the same that are qualified in the following manner:

■ **MEASURES FOR FUTURE FORCED EXECUTION:** Within this class of measures are:

- Depository form embargo.
- Registry form embargo.
- Retention form embargo.
- Collective intervention form embargo.
- Informative intervention form embargo.
- Administrative form embargo.
- The judicial sequestration
- The conservative sequestration.
- Annotation of the complaint.

■ **TEMPORARY PREVENTIVE MEASURES IN REGARDS TO THE MERITS:** When the principal claim relates to separation, divorce, custody, visitation, child delivery, guardianship and conservatorship, the foreseen execution of the upcoming final decision should proceed, giving preference to the interest of children affected by it.

There are also the following temporary measures in regards to the merits:

- Temporary Measure in regards to the Property Management Fund.
- Temporary Measure in regards to the Eviction Fund.
- Temporary Measure in regards to the Matter of Dispossession Asset Return Fund.

■ **INNOVATIVE PRECAUTIONARY MEASURES:** This measure, which relates its name, does not intend to maintain the existing status, but rather alter the state of fact or law being enforced before being dictated.

To this end we have:

- Innovative Action in Case of Interdiction.
- Innovative Measure in case of Cautious Possessory.
- Innovative Measure in Case of Violation of Rights.
- Innovative Measure in Case of Right to Privacy, image and voice.

■ **NON INNOVATIVE PRECAUTIONARY MEASURES:** Before the imminence of irreparable harm, the judge may order measures to conserve the status of fact or right whose status is to be or be invoked in the lawsuit and is related to persons or property included in the process. This measure is exceptional because of what is granted only when another foreseen measure of the law does not apply.

Arbitrative Conflict Resolutions

Arbitral jurisdiction can resolve conflicts of interest through an award that has the quality of being a final decision, which is to say, unchallengeable, unchangeable and enforceable according to Article 59° of the Law of Arbitration - Legislative Decree N° 1071. The arbitral award is defined as the adopted decision of the arbitrators in respect to the subject matter of dispute in the arbitration.

The Constitutional Court has held that Arbitration Tribunals, within their scope of its jurisdiction, *"are entitled to reject any intervention and / or interference by third parties, including from the administrative and / or judicial authorities, designed to usurp matters submitted for arbitration, in recognition of the existence of an arbitration agreement and the voluntary decision of the parties."* (Exp. N.° 6167-2005-PHC/TC).

To be able to opt for arbitration, there must be an arbitration agreement between the parties. This is defined as an agreement between the parties, by which, both submit to arbitration in regards to some or all disputes which arise or are to arise in the future between each other in respect to a particular contractual judicial relationship or otherwise.

The arbitration function is governed by a set of principles analogous to the judicial function but there are two principles that become relevant at the seat of arbitration, as listed in the following:

The *Kompetenz - Kompetenz* Principle, referred to the power that is credited to the arbitrators, in order to decide on matters that are within its competence that have been questioned and that may deal by including any objection or objections to arbitration that are concerning the non-existence, nullity, violability, invalidity or unenforceability of the arbitration agreement or by not having an agreement in regards to the usage of arbitration for resolving the disputed issue or any other whose estimation would preclude the merits of the dispute, in accordance with paragraph 1 of Article 41° of the Law of Arbitration.

On the other hand, the principle of *Autonomy or Severability of the Arbitration Agreement* is governed by paragraph 2 of Article 41° of that referred rule that by providing that the arbitration agreement which forms part of a contract is considered as an agreement that is independent of the other terms thereof. Therefore, the nonexistence, nullity, void, invalidity or inefficiency of a contract containing an arbitration agreement does not necessarily imply the absence, nullity, void, invalidity or otherwise from this.

With regards to the arbitral matter, Article 2° of the Arbitration Act states the following:

1. *“Disputes about all freely available materials that is according to law, as well as those that the law or agreements or international treaties have authorized to be referred to arbitration.”*

2. *When arbitration is international and one of the parties is a State or partnership, organization or a company that is controlled by a Government, that party may not invoke the prerogatives of its own law to evade its obligation under the arbitration agreement. Thus, our legislation does not expressly establish what would be the matters submitted to arbitrage; however, it does institute as a differentiating criterion the availability of the subject matter.*

Regarding the choice of arbitrators and their conformation, and the rules governing the arbitration proceedings, the parties have wide latitude in deciding the terms and conditions deemed appropriate.

Article 7° of the Arbitration Act, states that there are two types of arbitration that are regulated, establishing that this can be what is appropriate or institutional, as directed by an Arbitral Tribunal directly elected or organized and led by an arbitration institution; which depends on the decision taken by the parties.

On the other hand, Article 57° of the rule states that the substance of the dispute in domestic arbitration shall be governed in accordance to the law and international arbitration under the rules chosen by the parties; in either case, these may allow that the Court Registry to resolve and decide on the basis of equity or conscience.

Finally, in regards to the Recognition and Enforcement of Foreign Adjudications, Article 74° of the legislation, indicates that these be recognized and enforced in Peru in accordance to conventions and international treaties to which it is part. The solicitation for recognition is non-contentiously processed, without the intervention of the Public Ministry; and subsequently, the execution shall know the competent judicial authority.

State Contracts and Adquissions

By signing the Free Trade Agreement with the United States, Peru conducted a series of reforms to the national legislation with the aim of implementing this treaty in our country. By this framework, the New Law of State Contracts - Legislative Decree 1017 was dictated.

With this act, one of the most important instruments through which State agencies can purchase goods, apply for service delivery and execution of works was realized; therefore, the rules to be followed by suppliers and other entities in order to offer their products and services were set, thus generating the need for the best price and quality for the benefit of the citizens.

Under Article 9 of the rule, in order for any individual or corporation, domestic or foreign, to be able to participate as a contractor or supplier of any entity of the Peruvian State, that individual or corporation is required to be registered in the National Register of Suppliers (RNP) and not be restricted, sanctioned or disqualified from being contracted by the State. Likewise, that article states that the Supervising Agency of State Contracts - OSCE shall be responsible for administering the National Register of Suppliers (RNP), which shall be decentralized and their institutional website should stay current.

It is noteworthy to mention that according to Article 11° of the State Contracts Law, in reference to the selection process, bidders cannot agree among themselves or with third parties in order to establish practices that restrict Free Competition, under penalty of being disqualified from contracting with the State, without prejudice to other penalties that may apply.

There is several selection form procedures established by Law for the procurement of commodities, services or works with the State and which are divided as follows:

- Public tender: procurement of works, supplies and commodities.
- Public Tender: procurement of services of any kind.
- Direct Adjudication: procurement of goods, services and execution of works, according to the ranges established by the budgetary rules. In this case, there may be two types such as the Public Direct Adjudication, when the amount of the contract is greater than fifty percent (50%) of the maximum limit established for the Direct Adjudications in the budgetary rules and Selective Direct Adjudications for the other cases.
- Adjudication of Small Quantities, which is required for:
 - The procurement of goods, services and works, whose amounts are less than a tenth of the minimum limit set by the budgetary rules for public tenders or public competitions, as appropriate;
 - The hiring of independent experts to serve on the Special Committees; and,
 - Processes declared void, as appropriate in accordance with the provisions of Article 32° of the Act

The process of classic recruitment involves three stages (Córdova Schaefer, Jesús. The New Law of Procurement by the State. Systematic Study. Ediciones Caballero Bustamante. Lima. pág. 49):

■ **PLANNING AND PREPARATORY ACTS:** At this stage, the Entity should follow a procedure in order to record their Annual Procurement Plan before the Electronic System of State Contracting - SEACE and in this way; the supplier can plan the stock necessary to meet the needs of the entity. The Annual Contracting Plan should comply with the requirements of Article 7° of the Regulation. This stage is recorded until the approval of the technical file, which contains the technical characteristics of the goods, services or works.

■ **SELECTION:** According to Article 22° of the Regulations, the selection process shall include the following steps:

- Announcement of the selection process, electronically through the SEACE Portal (www.seace.gob.pe).
- The publication of the bases in electronic form
- The purchase of the bases that implies its registration as a bidder
- Stage of consultation and comments to the bases by the bidders, whose term will depend on the type of selection process
- Absolution of inquiries and comments
- Integration of the bases
- Presentation of the technical and economic proposal from the bidders
- Adjudication of the bid to the successful bidder
- Objection to the bid
- Signing of contract with the winning bidder
- Execution of the contract by the contractor

■ **EXECUTION OF CONTRACT:** This stage begins with the signing of the contract or its refinement, depending on the selection process. It involves the various obligations and rights that the parties have such as the term, obligation compliance, payment, warranties, among others.

On the other hand, it should be noted that the selection process for cases of public bidding and public tenders, shall be conducted by a Special Committee; for the case of direct adjudications, they shall be conducted by a Standing Committee as appropriate or Special Committee as appropriate; and in the case of processes for the adjudication of minor quantities, the embodiment in charge of contracting shall be responsible, unless the owner of the entity considers it suitable to appoint a special standing committee or as appropriate (Article 24° of the Act).

Finally, the supervisory board and head of the state contracting system is the Supervisory Agency of Contracting - OSCE, which has responsibility at national level and includes all entities that carry out processes for the procurement of goods, services and implementation of works.

→ **Civil Law and Business Contracts**

The Civil Code enacted in 1984 regulates all aspects of the person, from birth, marriage, successions (inheritance), properties, buildings, rights of collateral (mortgage and pledge), sources of obligations (contracts, etc.), contractual liability and liability extra contractual, public records and private international law.

Civil Contracts

In Peru, the rule governing civil contracts is the Civil Code of 1984, Section II, Contracts Nominees, Book VII, and Source of Obligations. In relation to civil contracts or nominees, this body of law, in its thirteen titles in Section II, lists the various Nominated Contracts. Thus, and among the most important are:

■ PURCHASING AND SALES CONTRACT. Article No. 1529^o - *"For sales, the seller is obliged to transfer the ownership of property of an asset to the purchaser, whom is to pay the price in money."*

In this case, the doctrine states that the contract of sale only instills the sellers obligation of transferring the property of an asset, which can be (real or personal property) or a right, and the reciprocal obligation of the buyer to pay a price in money, but does not constitute a property right on the property.

An important point, within that contractual figure is the reference to the costs that is generated by the sale, which is provided for in Article 1530^o which states that *"The delivery costs are borne by the seller and travel expenses to a different location other than the agreed to are charged to the buyer, unless otherwise agreed."*

Article 1532^o establishes the assets that may be offered for sale, in such a way that we have to: *"One can sell existing assets or ones that can exist, as long as they are certain or capable of being certain and whose sale is not prohibited by law."* In fact, it is noted that the quality of the goods that can be offer up for sale is established". Here, we emphasize some legal requirements for goods sold, therefore we have:

- *The existence of the Goods:* Although being an obvious requirement, it is understood that its regulation reflects the possibility of allowing the sale of goods that as of yet do not have any actual existence, but are expected to exist in the future and from there the order is to regulate the sales of future assets and of uncertain expectancies.

- *The determinateness of the asset:* This requirement is essential, since it would not be beneficial to have a thing that exist or that could exist if it wouldn't be determined, because neither the seller would know what to give the buyer nor could the purchaser know what could be insisted upon in order to satisfy personal interests; and

- *The marketability of the asset:* This requirement is referred to having the asset, which is the material of sale, be capable of being transferred.

-Finally, another important issue concerning the sale is the question of *the obligations of both the seller and buyer.* In the first case, Article 1549^o provides that *"It is an essential obligation*

of the seller to refine the transfer of the property of the asset”; while in the second case, Article 1558° states that “The buyer is obliged to pay the price at that moment, in the manner and place agreed to. In the lack of an agreement and except for different uses, it must be paid in cash at the time and place of delivery of the goods. If payment cannot be done at the place of delivery of the goods, it shall be made at the domicile of the purchaser. ”

■ **THE EXCHANGE AGREEMENT.** Article 1602°: *“For the exchange, the participating parties bind themselves reciprocally to the ownership of the assets.”*

“The exchange is a bilateral contract and commutative as the sale promises a thing or right in exchange for another, differing from the sale in that there is no price, but the two contracting parties own the goods bartered. Therefore, during the exchange the sales provisions govern as applicable.” (Exp. N° 1338-94-La Libertad. Ledesma Narváez, Marianella, Ejecutorias Supremas Civiles(1993•1996), p.428).

It is important to note that pursuant to Article 1603°, *“The exchange is governed by the provisions of the sale, as applicable to it.”*

■ **SUPPLY CONTRACT.** Article 1604 ° *“In regards to the supply, the provider agrees to implement in favor of someone else, the rendering of service or the delivery of good on a continual basis.”*

Through contracts like this, people seek to satisfy their diverse needs in the most appropriate way possible. The intention of this result is to be interrelated with the owners of goods that are in demand (such as producing or distributing entities of the same). Seen from this grand perspective, through the supply contract, it is noted that the supply contract is for ensuring the supply of essential raw materials, goods and products for the continuation of production and development. In short, this agreement ensures the continued availability of essential elements for economic activity. It is important to mention that the supply has a fixed-term contract, because its implementation is developed throughout the duration of the legal relationship created by the business, as long as the referred consistently complied with the rendering of services either periodically or continually.

■ **DONATION CONTRACT.** Article 1621°: *“In regards to the donation, the benefactor obligates itself to transfer freely to a grantee the ownership of an asset”.* According to the statement made by the Civil Code in regards to this legal institution, it can only be for the free transfer of property to the grantee in regards to the ownership of an asset.

It is important to mention that our civil law recognizes that the donation can be made for real estate and personal property. In the case of a personal property donation, Article 1624° states that *“If the value of the personal property exceeds the limit set by Article 1623°, the donation*

should be made in writing with a certain date, under penalty of nullity. The instrument should specified and valorize the assets that are being given as donations. "

On the other hand, in the case of real property, Article 1625° states that *"The donation of real estate property, must be done by public deed, with individual indications of the actual value and the fees that apply that must be paid by the benefactor, in regards to the real estate property or properties being donated, under penalty of nullity. "*

■ THE LEASE CONTRACT. Article 1666° states *"In regards to the lease, the landlord obliges itself to temporarily give to the tenant the use of an asset for an agreed upon rental fee".*

This contract has always been governed by Peruvian law; this is due to the antiquity of its use. The Civil Code considers that a person may lease as long as the individual or entity has the power to do so in regards to the assets that the individual or entity administers; on the contrary, the individual or entity can not lease any assets that it administers, if it does not have the power to do so.

In this contract, it is noted that there are obligations of the landlord and the tenant. Being obligations that are part of the first (Articles 1678° and 1680°):

- To hand over to the tenant the property being leased with all its accessories at the time, place and state of condition agreed upon;
- To maintain the tenant in the use of the property during the term of the contract and to conserve it under good conditions towards the end of the lease; and
- To be able to conduct during the lease all necessary repairs, unless otherwise agreed upon.

It is important to add that once delivery of the property to the tenant is made, it is presumed to be in a serviceable state along with all the necessities required for its use (Article 1679°).

Among the obligations of the tenant, in regards to the most notable points that are indicated in Article 1681°, we have:

- To receive the asset, to care for it diligently and to use it for the purposes that it was granted for under contract or to what may be presumed from the circumstances;
- To promptly pay the rent on time and place agreed upon, failing that, each month at their place of residence;
- To promptly pay the public utilities provided for the benefit of the property, subject to the rules governing them;
- To give immediate notice to the landlord of any seizures, disturbance or imposition of servitude that is attempted against the asset;
- To allow the landlord to inspect the property for cause, with prior notice of seven days; and for among other reasons, to not use the asset imprudently or contrary to public order or good manners.

Finally, it can be mentioned that, under Article 1687º, the lease may be of a fixed or indefinite period.

■ **THE LEASE AGREEMENT (DELIVERY) OF SERVICES.** Article 1755º: *"In regards to the provision of services it is agreed that these or its outcome are provided by the lender to the principal."*

The service contract is a one that is typical and nominated, by which a named lender or services lesser subjects themselves to make provision in favor of another named principal subject or service tenant.

Article 1756º of the Civil Code states that the arrangements for the provision of nominees are:

- The Lease Service
- The Work Contract
- The Mandate,
- The Deposit, and
- The Sequestration.

Thus, our civil law mentions the following modalities. Article 1764º: *"In regards to the leasing service, the lesser is obliged, without being subordinate to the principal, to provide their services for a certain amount of time or for a determined job, in exchange for a fee."* Article 1771º: *"In regards to a work contract, the contractor undertakes the responsibility to do a determined task and the principle is to pay a fee."* Article 1790º: *"In regards to the mandate, the authorized representative is obliged to perform one or more legal acts on behalf and in interest of the principal."* Article 1814º: *"in regards to the voluntary deposit, the depositary is obliged to receive an asset for safekeeping and to return it when requested by the depositor."* Article 1857º: *"In regards to the sequestration, two or more depositors are entrusted with the safekeeping and conservation of an asset for which controversy has arisen."*

Business Contracts

■ **FRANCHISING AGREEMENT.** It is a business collaboration agreement, whereby the franchisor permits the use of its brand and know-how, by assisting and controlling the franchisee in the production of goods or services in exchange for a monetary benefit (Rivera, Carlos Enrique. Franchising, Noción y Fundamento del Contrato, Revista Estudios de Derecho Comercial, N° 5, Buenos Aires, Argentina, 1989). In our country, it is said that these contracts approximately began to be used in 1981, by the fast food chain Kentucky Fried Chicken when they started to do business in Peru (Bravo Melgar, Sidney Alex. Contratos Atípicos e Innominados. Lima: Ediciones Legales Iberoamericana, 2003. Pág. 12); subsequently, its use has been increasing, making it one of the biggest contracts used in the commercial sector.

■ **TRUST AGREEMENT.** According to Article 241º of Law of the Financial and Insurance Systems and of the Organizational Law of the Superintendence of Banking and Insurance - Law N° 26702,

it is defined as follows: *"[...] It is a legal relationship whereby the founder of a trust transfers assets in trust to another person, the trustee, for the establishment of a trust estate, subject to trust domain of the latter with the purpose of complying to a specific affinity in favor of the founder of the trust or a third party called a trustee. The trust estate is different from the assets of the trust, the founder of the trust, the trustee, or in this case, of the consignee of the remaining assets. [...]"*

Therefore, the trust involves three parties which are: the trustor, the trustee and the trustee for the establishment of an autonomous estate that will separate the parties.

In Peru, according to Article 242° of the law, only the following entities may be trustees: COFIDE, banking entities, finance entities, municipal savings and credit, municipal savings and popular credit, Entities of Development of Small Companies, Micro Companies - EDPYMEs, savings and loans, corporate trust services, rural savings and loans, insurance and reinsurance companies, as well as companies and institutions supervised by the Superintendence, which aims to guarantee, support, promote and advise directly or indirectly the Micro and Small Enterprises (MYPE) in any economic sector.

Likewise, there is a variable called "Titling Trust", which is found in Article 301° of the Law of the Securities Market, which is defined as follows: *"In the trust, the trustor is entrusted and obligated to effect the trust transfer of a set of assets in favor of the trustee for the establishment of an autonomous patrimony, called the trust estate, which is subject to the trust domain of the same and with the care with the specific affinity of serving as a support for the rights embodied in values whose subscription or purchase, names its holder as trustee."*

In this mode, in order to perform the functions of a fiduciary, the companies and institutions of the financial system should constitute title partnerships, in accordance to Article 242° of the Law of the Financial, Insurance and Organization System of the Superintendence of Banking and Insurance.

■ **KNOW HOW CONTRACT.** According to the words of Sidney Alex Bravo, it can be defined as follows: *"It's an unnamed atypical contract, by which a legal entity or an individual agrees with another of similar nature, the granting of a secret formula of manufacturing or processing of an item in exchange for an agreed price and duration. The secret knowledge being transferred is industrial, technological, among others."*

Likewise, according to the International Chamber of Commerce, this type of contract is defined as: *"[...] the totality of knowledge, in regards to specialized knowledge and experience, is focused on the procedure and the technical realization of the manufacturing of a product, while clarifying that this concept can designate not only formulas and procedures that are secret, but also a technique that is linked to proprietary manufacturing processes which is necessary to make use of the patent that may also designate practical procedures, particularities and specialized*

technical methods, which have been obtained by a producer through research and should not be acquired by the competition” (En: STUMPF, Herbert. *The Contract of Know How*. Bogotá: Temis, 1984. Pág. 5 - 6).

While it is a contract that is associated to industrial property, its scope is quite diverse, due to the fact that it is used with great success in various fields.

■ **LEASE AGREEMENT.** Leasing or a financial lease in our country is governed by Legislative Decree N° 299, which in its Article 1° defines it as follows: “(...) *A Merchant Contract that has as an objective the sale of goods or real estate by a leasing company for the use of the tenant, via installment payments and with an option in favor of the tenant of purchasing such goods under an agreed upon value.* ”

It should be noted that according to our law, the lessor when domiciled within the country, should be for all purposes, an entity that is banking, financial or any other, that is authorized by the Superintendence of Banking and Insurance, under Article 2° of the Law.

Likewise, Article 6° of the norm indicates that leasing property must be covered by insurance policies that guard against risks that might affect or destroy them.

Regarding the formality, according to Article 8° of the Act, the conclusion of the financial leasing contract should be placed by Public Deed, which may be registered in the Public Registry.

It is important to remember that the matters of leasing assets are not susceptible to seizure, involvement or tax that is administratively or judicially mandated, in accordance to the law.

In conclusion, it is important to mention the tax effects that this financial transaction has: the General Sales Tax - VAT which is paid in monthly installments, which shall be considered to be tax credits by the leasing entity; likewise, it may depreciate at an accelerated pace the property or properties that are subject to the lease, provided that the contract contains a term of 60 months for real estate property and 24 months for personal property.

→ Consumer Protection Law

The legal framework governing the rights of consumer protection has undergone various changes and modifications. Today those rights are protected by Article 65 ° (Art.65.- “ The State defends the interest of consumers and users. For this reason, it guarantees the right to information about goods and services that are found in the disposition of the market (...) ”) of the Political Constitution of the State and by the Code of Consumer Protection and Defense (hereinafter called CPDC) promulgated by Law 29571, a standard that took effect in October 2010.

Basic Definitions

The definitions relating to consumer protection are set forth in Article IV of the Preliminary Title of the CPDC, among which we mention:

■ **RELATIONSHIP OF CONSUMPTION.** Relationship of Consumption is the bond that develops between a consumer and a supplier who, for consideration, provides a product or provides a service; (Paragraph 5, Article IV of the Preliminary Title of the CPDC). They also cover those consumer relations that are free of charge, provided they have a business purpose intended to motivate or encourage consumption; (paragraph 3 of Art. III of the Preliminary Title of the CPDC)

■ **CONSUMER.** Etymologically the word comes from the Latin "*consumere*" that means spending or destroy; therefore the etymological meaning would be treated as spent goods.

For the Code of Consumer Protection and Defense, the Consumer concept comprises:

- *Consumers or users.* The individuals or legal entities that purchase, uses or enjoys as end products or services that are target material or immaterial, for personal gain or for their family or social group, thus acting in a field outside a business or professional activity. For purposes of this Code a person or legal entity is not considered a consumer when they acquire or use or enjoy a product or service normally intended for the purposes of its business as a supplier.

-The micro-entrepreneurs that show evidence of a situation of asymmetric information with the provider regarding those products or services that are not part of the order of the business itself.

-In case of doubt about the final destination of a given product or service, they who acquires or uses or enjoys it qualifies as a consumer ..."

■ **SUPPLIER.** Section 2 of Article IV of the Preliminary Title of the Code of Consumer Protection and Defense defines a Supplier as... individuals or legal entities, *public or private Rights, that routinely manufacture, process, handle, condition, mix, pack, store, prepare, dispense, supply goods or services of any kind to consumers. By an expository form that is not limited considers the following to be providers:*

- *Distributors or merchants.* The individuals or legal entities that sell or otherwise provide wholesale, retail, products or services for end consumers, even if it is not developed in establishments that are open to the public.

- *Producers or manufacturers.* The individuals or legal entities that produce, extract, industrialize or process intermediate or final goods for supply to consumers.

- *Importers.* The individuals or legal entities that import goods for sale or provision in another form in the national territory.

- *Service Providers*. The individuals or legal entities that provide services to consumers ... "

■ **ASYMMETRIC INFORMATION.** Occurs in any exchange of goods and services, where one party is better informed than the other. (Article IV of the Preliminary Title, section 7 of the Code of Consumer Protection and Defense). This Asymmetry of information is considered as a market failure, because it prevents the proper and efficient allocation of resources that creates high transaction costs, creates distrust in the market and hardly encourages competition.

Principles

The CPDC has established a set of principles with which it operates all consumer relationships. Principles that may incur doubt or a vacuum help resolve the dispute between consumer and provider with the purpose of making economic freedom feasible. Thus Article V of the CPDC establishes the following principles:

■ **SOVEREIGNTY:** sustains not only the right to information that is generally recognized by consumers, but also duties of specific information. (Section 1, Article V of the Preliminary Title of the CPDC).

■ **PRO CONSUMER:** it is part of a diminished bargaining power in the case of one of the parties (consumer) that sets itself in an informational asymmetry, a difference that justifies criteria in favor of the weaker party in order to balance these relationships: *indubio pro-consumer*, (section 2, Article V of the Preliminary Title of the CPDC).

■ **TRANSPARENCY:** full access to information about products or services offered. The information must be truthful and appropriate. (Section 3, Article V of the Preliminary Title of the CPDC).

■ **INFORMATION ASYMMETRY CORRECTION:** it protects the consumer against all contractual imbalances that are generated by asymmetric information, (Section 4, Article V of the Preliminary Title of the CPDC).

■ **GOOD FAITH:** in the market the consumers, providers and consumer organizations should be conducted in good faith, trust and loyalty; (section 5, of the Preliminary Title of the CPDC).

■ **MINIMAL PROTECTION:** realizes the systematic nature of consumer protection rules, here forth establishing a minimum standard of protection for the consumer; (section 6, Article V of the Preliminary Title of the CPDC).

■ **PRO ASSOCIATIVE:** realizes functions of promotion by the State to facilitate the development of consumer associations; (section 7, Article V of the Preliminary Title of the CPDC).

■ **PRECEDENCE OF THE REALITY:** in regards to the consumer right in order to use the parameters to analyze the existence of an agreement supported by evidence and substitutes; (section 8, Article V of the Preliminary Title of the CPDC).

Consumer Rights

■ **BASIC RIGHTS (*Numerus Apertus*).** The CPDC not only contemplates and protects the right to information, but through its Article 1 it set via an unlimited expository manner, a series of basic rights that are established in favor of the consumer, including via a tacitly manner, those others that are not referred to in that section, which are also eligible for protection and for which there is no waiver or agreement to the contrary.

■ **DUTY OF INFORMATION.** Given that the basis of consumer protection is part of the existence of asymmetric information, it appears that the most important mechanism in order to promote efficient exchanges is the obligation to communicate relevant information (which is information held by providers in order to take control of the production process and marketing) for consumption; (Articles 2 to 16 of the CPDC).

■ **DUTY OF APPROPRIATENESS.** The Appropriateness is the coincidence between what the consumer expects and what the consumer actually receives. But in turn, what the consumer expects depends on the quantity and quality of the information received from the providers within the framework of a consumer relationship. CPDC provides in Article 18 the definition of Appropriateness and reserves for Articles 19 to 24 those obligations, guarantees and minimum service that should be offered by any provider, including:

- Obligation to vouch for the appropriateness, quality and brand names of the products and compliance with relative advertising. (Art.19 CPDC).

- Warranties, expressed or implied, regarding the products and services offer, according to law, agreements or commercial uses respectively. (Articles 20 to 22 CPDC);

- Repair services and attention to claims. (Articles 23 and 24 CPDC).

■ **CONSUMER CONTRACTS AND ABUSIVE CONSUMER CLAUSES.** The Consumer Contract is understood as any legal relationship which involves a consumer, a provider in exchange for payment; (Articles 45 to 48 CPDC). The key considerations of any consumer contract are:

- Scope application: encompasses consumer relationships that occur within the national territory. (Article III CPDC)

- Objective: to protect the consumer either directly or indirectly when exposed in a relationship of consumption, even in a preliminary stage of this one.

- That it comprises all consumer relationships, even those that are gratuitously.

- That it must unequivocally state the willingness to engage the consumer.
- That it must not have terms or practices with burdensome or disproportionate obstacles.
- That it must have the right to use the same mechanism or means in order to be able to opt out of contracts.
- That it must have contractual forms with characters that are no less than 3 ml.
- That it must deliver a copy to the consumer

■ **ABUSIVE CONTRACTING CLAUSES.** The general contract clauses are governed by the provisions of the CPDC (Articles 49 to 52) and by the provisions of the Civil Code. Among its most important features are:

- They are not individually negotiated provisions that contrary to the requirements of good faith, put the consumer, to his detriment, in a situation of disadvantage or inequality or that nullify their basic rights.
- That it takes into account: the nature of the products or services, the circumstances at the time of its realization, the other terms of contract or otherwise of which this depends on.
- That the provider asserts in regards to a particular clause which has been individually negotiated bears the burden of proof.

Responsibility and Sanctions

The CPDC contemplates that a provider who infringes on any of the provisions of the protection of consumer rights will find themselves immersed with administrative responsibility, without prejudice to the civil and criminal proceedings brought against the provider. The administrative responsibility shall give merit to the authority of consumption in order to impose the corresponding sanction as per the type of offense. It should be noted that the responsibilities, procedures and sanctions should apply the rules set in Articles 97 to 127 of the CPDC, among which include the following considerations:

■ **ADMINISTRATIVE RESPONSIBILITY** is determined by the following entities of resolutions of the National Institute for Defense and Protection of Intellectual Property (INDECOPI):

- Entities of summary proceedings resolutions of consumer protection,
- Consumer Protection Commission,
- Special chamber of the INDECOPI Tribunal

■ **DISCIPLINARY PROCEEDINGS** may be initiated or promoted by:

- Consumer Report
- Report from a Consumers' Association
- Authority initiative

■ INDIRECT CLASSIFICATION (Article 108)

- Transgression to the provisions of the Code
- Breach of conciliatory agreements and arbitration adjudications
- Offenses listed under Legislative Decree 807

■ ADMINISTRATIVE PROCEDURES

- Sanctions (literature from Article 106 of the CPDC):
 - For violations of consumer protection rules
 - For Breaches of conciliatory agreement or adjudication
 - Administrative procedure that is sanctioned for providing or hiding false information; destroying or altering information or documentation that had been required; unjustified refusal to comply with requests for information;
- Breach of terms (literature b of Article 106 of the CPDC):
 - Breach of corrective measures
 - For non-payment of costs and litigation fees
 - Breach of injunction
- Settlement costs and fees of proceedings (Article 106 paragraph c of the CPDC)

■ TYPES OF PROCEDURES.

- Normal Procedure for violations of consumer protection rules, which can be:
 - Promoted ex parte (initiated by the consumer or consumer association) or,
 - Promoted from office (The Commission on Consumer Protection of INDECOPI or the Technical Secretariat sues the provider)
- Summary Procedures (Articles 124 to 127 of the CPDC), process that is characterized by:
 - Complaints which shall not exceed three (03) UITs or; exclusively concerning the information request, abusive collection method, delay in delivery of the product or; they are claims for non-performance of corrective action, conciliatory agreements and cost settlements and fees.
 - Thirty (30) day term limit for each instance,
 - The parties can only offer documents, without prejudice to the presentation of evidence by the court;
 - This procedure is transmitted before: First instance: Resolving Entity of Summary Trial Procedures of Consumer Protection; Second instance: Committee on Consumer Protection and, Third instance: Specialized Chamber of INDECOPI (exceptionally and via petition for review).

■ ACCORDING TO THE SERIOUSNESS OF THE OFFENSE, in accordance to the criteria in the Code of Consumer Protection and Defense, the scale of penalties is as follows:

- Minor offenses: Reprimand or fine of up to 50 UIT (Subparagraph A of Article 110 CPDC).
- Serious offenses: A fine up to 150 UIT; (Paragraph b of Article 110 CPDC).
- Very serious offenses: A fine up to 450 UIT (Paragraph C of Article 110 CPDC).
- Microenterprises: the fine shall not exceed ten percent (10%) of the sales or gross income received by the offender (Article 110 CPDC).
- Small businesses: the fine shall not exceed twenty percent (20%) of sales or gross income received by the offender (Article 110 of the CPDC).
- These rules do not apply when there is impairment to life, health or integrity of consumers; (Article 110 CPDC)

■ **CORRECTIVE MEASURES** (Articles 114 to 116 of the CPDC), the CPDC signalizes the following:

- *Remedial Corrective Measures*: They are intended to compensate the direct and immediate economic consequences incurred upon the consumer by an administrative offense to its previous state. It can be issued at the request of a party or ex parte, provided they are expressly informed of this possibility in the notice of charge to the provider by the authority responsible for the procedure.

- *Complementary Measures*: The complementary corrective measures are intended to reverse the effects of delinquent behavior or to prevent it from occurring again in the future. It can be issued ex parte or upon request of a party. The infractions to the regulations contemplated in the CPDC expire in two (02) years beginning on the day that the infraction was committed or since it ceased, if the infraction had continued (Art. 121 CPDC). The sanction that the authority imposes expires in three (03) years beginning the following day in which the resolution had been signed. (Art. 122 CPDC)

National Integrated System of Consumer Protection

The Art.132 of the CPDC points out that which forms part of the National Integrated System of Consumer Protection a set of principles, rules, procedures, techniques and instruments destined to harmonize public policies in the State in order to protect the rights and interests of consumers. As part of this set of principles, rules and procedures have provided some mechanisms of conflict resolution:

■ **CONSUMER ARBITRATION** (Arts.137 a 149 CPDC).

■ **COMPLAINTS BOOK** (Arts.150 a 152 CPDC) physical or virtual in which the consumer can formalize a complaint regarding a product or service offered. The Complaints Book is in the hands of the Supplier, who needs to take into consideration:

- Exhibit in a visible and easily accessed public place with a sign that indicates: (i) the existence of the Book, (ii) the right that the consumer to request or demand the book at any time.
- Send to INDECOPI the documentation corresponding to the book when it is required.
- In disciplinary procedures, the provider must send a copy of the complaint with its disclaimers.

→ Intellectual Property Rights

Intellectual Property abides by the types of property that are the result of the creations or the human intellect in the literary, artistic, scientific, and industrial fields. In this context, Intellectual Property includes:

- Rights of Industrial Property
- Copyright
- Unfair Competition

Rights of Industrial Property

In Peru, the rules that regulate Industrial Property Rights are supranational and national in origin. Related to supranational rules that exist include Decision 486 (Common Provision about Industrial Property) and the Decision 689 (Adaptation of certain articles from Decision 486 – Common Provisions about Industrial Property, that allow the development of Industrial Property Rights through the internal legislation from member countries), Andean norms that are complemented by the Legislative Decree 1075 (Legislative Decree which approves the supplementary provisions to the Decision 486 of the Commission of the Andean Community that establishes the Common Provisions on Industrial Property), Legislative Decree 1033 (Law of Organization and Functions of the National Institute of Defense of Competition and Protection of Intellectual Property (INDECOP)) and by Legislative decree 807 (Law of Faculties, Rules, and Organization of the National Institute of Defense of Competition and Protection of Intellectual Property (INDECOP)).

It is precisely the Legislative Decree 1075 that establishes which are the elements of the Industrial Property susceptible to protection.

Art.3º.- *“Elements constituting industrial property”*

For the purposes of this Legislative Decree constitute the elements of industrial property:

Invention patents

- Protection Certificates
- Patents of models of utility
- Industrial Designs
- Business Secrets
- Layout designs of integrated circuits
- Product and Services Brands
- Collective Brands
- Certification Brands
- Commercial Names
- Commercial Slogans
- Designations of Origen

Elements whose registration, protection, and archive that are covered within the reach of the National Institute of the Defense of Competition and Protection of Intellectual Property (INDECOPI)

Invention Patents

The Invention Patent is a title awarded by the State to an inventor or an assignee to exercise the exclusive right of exploitation of an invention (whether it be a product or procedure), which provides, en general, a technological advancement or a technical solution to a problem. In order for an invention to be awarded a patent, the Decision 486 (Andean norm) establishes the following requirements:

Art.14^o.- *“Member Countries will award invention patents, that are a product or procedure, in any field of technology, when considered new, has an inventive level, and are susceptible to industrial application”.*

- *Innovation*: whenever it is not covered within the state of the art. That is to say, the patent will be considered new whenever the information relative to the product or procedure has not been made known to the public.

- *Inventive level*: will have to be innovative, provided that an expert in the field does not deem it obvious.

- *Industrial Application*: the purpose of the patent must be susceptible of application, production, and/or use in any type of industry.

As to the time of the patent protection, the Andean norm establishes that: “The patent will have a term of twenty years counting from the filing date to the corresponding Member Country.

Protection Certificates

The Protection Certificates are defined in Legislative Decree 1075, rule that defines as.... *Any inventor domiciled in a country that has a Study of a project of Invention and needs to be experimented or build by a mechanism that requires to make public his idea, may request a Protection Certificate to a Competent Body will be granted for a period of one (01) year.”*

The holder of this certificate is granted preferential right to any third party that intends to invoke the rights of the same type or material within one year of protection afforded by the certificate. It should be noted that the right is lost within the period of protection, if the owner of the certificate does not solicit a final patent.

Patent of Model of Utility

A Model of Utility is an exclusive right that is given upon a “small patent” or “innovative patent” that which is defined by Decision 486 as:

Art.81.- “It is considered a model of utility, all new forms, configurations, or provisions of elements, any artifact, tool, instrument, mechanism or other object or any part thereof, which allows the better or different functionality, use or manufacture of the object that incorporates or offers some type of usefulness, advantage, or technical effect that previously did not have. Utility models shall be protected through patents.”

The period of protection for this type of patent has been fixed by the Andean norm of ten years, beginning from the date of the presentation of the solicitude by the respective Member Country. Much like the Invention Patent, that obtained as a Model of Utility gives the right of the owner to exercise appropriate legal action against whoever wants to make use of it without proper authorization.

Industrial Designs

An industrial design is referred as an ornamental aspect or aesthetic aspect of an article. Art.113 of the Andean norm (Decision 486) stipulates that industrial designs can consist of three-dimensional features such as the shape and surface of an article, or in the two-dimensional features, such as designs, lines, or color. The industrial designs or drawings apply to a wide variety of industrial and artisanal products, whenever they fulfill the requirement as being innovative, that is to say, that their description, use, and commercialization have not been accessed by the public.

As to the time period of protection that is granted to the one who requests and obtains the registration of an Industrial Design, the same has been determined under Art.128 of the Andean norm in ten (10) years, beginning from the date of the presentation of the request of the registration in the Member Country.

Business Secrets

Business secrets may relate to the nature, characteristics, or purposes of a product; to the knowledge about its industrial procedures; or; the means of distribution or commercialization of products or the provision of services which is kept in reserve provided that its holder shows an improvement, progress, or competitive advantage. In this context, they are to be recognized and protected by Art.260 of the Andean norm, which states: *Art.260.- A business secret is considered any type of information that has not been disclosed by a natural, legal person can possess, which can be used in some type of productive, industrial, or commercial activity, and that is susceptible to be transmitted to a third party, to the extent that the information is: Secret,*

in the context that as a whole or in the joint configuration of its components, is not generally known nor easily accessible for those who normally deal with such information. Has a commercial value by being a secret; and Has been an object of reasonable measures taken by the legitimate holder to maintain the secret”.

It should be noted that the protection of the business secret will last as long as the conditions set out in the article.

Layout Designs of Integrated Circuits

In accordance with Art.86 of the Andean norms, the layout designs of integrated circuits are:... *“integrated circuit: a product, in its final or intermediate form, whose elements, in which at least one is an active element or any or all of the interconnections, are an integral part of the body or of the surface of a piece of material, and which are intended to perform an electronic function; Layout design: the three dimensional disposition, expressed in any form, of the elements, at least one of which are active, and interconnections of an integrated circuit, as well as the dimensional layout prepared for an integrated circuit designed to be manufactured”.*

The requirement that is demanded from a layout design of integrated circuits capable of protection is that it is an original. In other words,, when the product of their own intellectual effort of its creator and is not commonly used in the industrial sector. (Art.87, Decisión 486). Regarding the exclusive right that is awarded on the registration of the layout design, the Andean norm notes: Art.98.- *“The exclusive right of the registered layout design will last for a period of ten years beginning from the earliest of the following dates: The last day of the year in which the first commercial exploitation of the layout design in any part of the world or, The date that the request was registered in a competent national body of the respective Member Country.*

The protection of the registered layout design will expire after a period of 15 years counting from the last day of the year that the layout was created.

Product and Service Brands

It is understood that a brand is any distinctive sign with which the holder (natural or legal person) seeks to promote the consumption of a given product or service among consumers. As stated in Art.134 of the Andean norms, a sign can be constituted as a brand when: *“The effects of this regimen will constitute a brand any sign that can be distinguished as a product or service in the market. It may be registered as a brand the signs that are accepted as a graphic representation. The nature of the product or service with which the brand is applied shall not be considered an obstacle to its registration”.*

The following signs can be considered, among others, to be constituted as a brand:

- The words or combination of words;
- The images, figures, symbols, graphics, logos, monograms, portraits, labels, emblems and shields;
- The sounds and colors;
- The letters and numbers;
- A color defined by a form, or combination of colors;
- The form of the products, its packaging, or wrappers
- Any combination of signs or means indicated in the preceding paragraphs”.

Anyone who intends to register a should previously establish in which of the 45 classes that are referred to in the International Classification of Goods and Services that are included in the Agreement of Nice, are covered products or services that are capable of protection and registration.

Requirements

The requirements that any brand of product or service must carry are:

- **DISTINCTIVE FORCE:** is the one which gives the individuality required that allows the product or service to be recognized, among similar ones offered on the market by competitors. The brand may not mislead the consumers.
- **GRAPHICAL REPRESENTATION:** the brand must be identifiable or visible to the consumer´s view

Type of Brands

The brand is composed of one or more elements (words, images, symbols, forms, colors, or a combination of these). By virtue of this, the national norm (Legislative Decree 1075) establishes the provisions related to the registration of the brand that they can be:

- Verbal. (Art. 46)
- Figurative. (Art. 47)
- Joint Venture (Art. 48).

Processing the Registration of the Brand in Peru

Peru is based upon the law of protection of brands in the beginning of the registration of the brand. That is to say, with the registration of brand before the National Institute of the Defense of Competition and the Protection of Intellectual Property (INDECOPI), begins the right to which is it conferred.

The processing of the registration is regulated by the articles 138 and 151 of the Andean norms,

which in turn, is complemented by the Decision 689 and by articles 45 to 60 from the Legislative Decree 1075.

It should be noted that since 2008, it is allowed to request the registration of Multi-class by which a brand can be registered that protects the products or services of various kinds of classes. Such as in Art.58 of the national norms states: *When products and/or services that belong to more than one class within the International Classification of products and services in the Nice agreement, the application will result in a single registration.*

The holder of the registered sign that distinguishes specified products and services can obtain a new registration for the same sign, a condition that it distinguishes products or services that are not covered in the original registration. The new request of registration will be processed in an independent manner following the procedures that the present Legislative Decree determines for the processing of a registration”.

Term of Protection

The term with which a brand is granted, is determined in Article 152 of the Decision 486, rule that contemplates the protection of ten (10) years, renewable by successive or similar periods.

Collective Brands

By way of collective brands, it can be distinguished by a geographical origin; a type of material, mode of manufacture or, any other type of inherent characteristic to an assembly, group, or association of persons (natural or legal). Thus, the collective brand is defined by the Art.180 of Decision 486 as: *any sign that serves to distinguish the origin or any other common characteristic of goods or services belonging to different companies and that are used under the control of a licensee”.*

The protection that these types of brand offer is similar to brands of products and services, or in other words, is ten (10) years renewable for successive or similar periods.

Certification Brands

Article 185 of the Andean norms define the certification of brands as: “The certification of a brand means a sign to be applied to products or services whose quality of other characteristics have been certified by the holder of the brand”. An important requirement that is referred to in Art.187 of the Decision 486 to grant the certification of a brand, is that is be accompanied by the use of the brand where it is indicated that the products or services will be object of certification by the holder, is defined by the characteristics guaranteed by the presence of the brand and is described in a manner in which the control of such characteristics during the validity of the brand in question shall be considered by an entity that requests the registration of the brand is

“competent to certify” the products applies. Similar to that of product and service brands as well as collective brands, the protection awarded to these types of brands are given ten (10) years renewable by successive or similar periods.

Commercial Names

The commercial name is the sign by which a person (natural or legal) is identified in the exercise of an economic activity. Art.190 of the Decision 486 defines it as: *a commercial name shall be understood as any sign that identifies an economic activity, a company, or commercial establishment.*

A company or establishment may have more than one name. A commercial name can be constituted by a company or establishment, among others, your proper name, company name, or other designation written into the registry of persons or corporations. The commercial names are independent of the designations or company names of legal entities, both being able to co-exist”.

The exclusive right to a commercial name shall be acquired by its first use in the business and ends when the use of the name or cease of activities of the company or establishment ends. The registration of the commercial name shall be granted for a period of ten renewable years, beginning on the date of the resolution that is it registered or from the date of its deposit. (Art.196 of the Decision 486).

Commercial Slogans

The current legislation applicable to commercial slogans is article 175 of the Decision 486; a rule which in turn is complemented by the current national norms (Legislative Decree) in Arts. 75 and 76 indicate that such distinctive signs, commonly known as advertising slogans, can be made up of words, phrases, or legends and; whose aim is to complement the brands. The main purpose of a slogan is none other than to associate a brand with its positioning in the minds of the consumers and in the market.

The Andean norm has established a tacit reference to the provisions that are contemplated by the Decision for the registration of brands. Art.179 reads: *“shall be applicable to this title, the relevant provision of the Title of the Brands to the present Decision”*. In this sense, it is understood that similar to the brands, the commercial slogans include among other considerations, with the same protection period of ten renewable years by similar periods.

Designations of Origin

The designation of origin is a sign which serves to designate or distinguish and protect a product based on the special characteristics that it possesses, derived from the geographical

environment of production, extraction or manufacture, and considering human and climatic factors. Because of the connection, the product is known by the name of the geographic location. In the case of Peru, the national norm (Legislative Decree 1075) states: Art.88- *“Designations of Origin: The Peruvian State is the holder of the designations of Peruvian origin and on them shall be granted authorization of use”*.

The Andean norm establishes in Art.203 that the declaration of protection of designations of origin can be made by:

■ OCCUPATIONAL

■ AT THE REQUEST OF THOSE WHO CAN DEMONSTRATE A LEGITIMATE INTEREST, understood as such, natural or legal entities who are directly engaged in the extraction, production, or processing of the product or products to be covered by the designation of origin, as well as associations of producers.

The Designations of Origin that have been granted until the present date include:

DATE OF RESOLUTION	DESCRIPTION OF THE DESIGNATION OF ORIGIN	LOCATION
1990	Pisco	Ica
2005	Maíz Blanco Gigante Cusco	Cusco
2006	Chulucanas	Piura
2007	Pallar de Ica	Ica
2010	Café Villa Rica	Pasco
2010	Loche de Lambayeque	Lambayeque
2011	Café Machu Picchu - Huadquiña	Cusco
2011	Maca Junín Pasco	Junín - Pasco

As for the protection period that is afforded to the Designation of Origen, Art.210 of the Andean norms, establishes that it will have duration of ten (10) years, and will be allowed to be renewed for similar periods.

Copyright

The legislation in Peru governs the rights of author, is constituted by national standards as well as by international conventions. Between the national standards are the Legislative Decree 822 (Law on Copyright), the Law 28571 (Law amending the article. 1880 and 189o of the Legislative Decree 822), Law 27861.

The Legislation in Peru that governs Copyright Laws is constituted by National laws as well as by international Conventions. Among the national laws that are included in Legislative Decree 822 (Law on Copyright), Law 28571 (Law amending the article. 1880 and 1890 of the Legislative Decree 822). Law 27861 (Law that exempts the payment of copyright for the reproduction of the works for the blind), the Regulation of the National Registry of Copyright and Related Rights, Legislative Decree 1076 (law modification of the Legislative Decree 822), Decree 1092 legislative (adopted border measure for the protection of copyright and related rights), Supreme Decree 003-2009-EF (regulation of the Legislative Decree 1092 approving border protection measures of) (copyright or related rights and brand rights), law 29316 (law amending, incorporates and regulates various provision in order to implement the Promotion of Trade Agreement signed by Peru and the United States of America), and law 29263 (law amending various articles of the Penal Code and the General Law of the Environment.

In regard to International Agreements, Peru has pledged to the Agreement of Bern for the Protection of Literary and Artistic Works and the Universal Convention on Copyright.

Copyright, also called “droit d’auteur” correspond to those rights that are granted to the creators or literary, artistic or scientific works that exercise its powers of patrimonial and moral nature with respect to the works of its creation.

In this sense Art. 3 of the Legislative Decree states: *The protection of the copyright rest within all of the works of ingenuity, literary or artistic fields, regardless of gender, forms of expression, merit or purpose. The rights recognized in this law are independent of the ownership of the material object in which the work embodies and their enjoyment or exercise are not subject to the requirement of registration or compliance with any other formality.*

■ MORAL AND PATRIMONIAL RIGHTS. The authors and other holders of rights in regards to works that literary, artistic or scientific, whatever the genre or form of expression and regardless of literary or artistic merit or purpose, are entitled to moral rights and patrimonial rights, the same that is found to be provided for in Article 30 and in the Legislative Decree 822.

Moral Rights are those personal rights which are among the following:

- The right of the author to disclose their work or to keep it within the sphere of privacy;
- The right to the recognition of their intellectual paternity and even this right entitle the author to decide whether disclosure of the work should be done in an anonymous or pseudonymous form;
- The right to respect the integrity of the work that gives the author an opportunity to oppose any act of modification on it;
- To have the right to modify or do a variation by which the author can make changes provided they do not prejudice the rights acquired by third parties and finally
- The right of retraction or reversal through which the author is entitled to withdraw their work with the resulting trade compensation for damages to the injured party.

This type of right is characterized as being indispensable

In regards to the patrimonial rights, it should be mentioned that these are related to the economic benefits that can and / or should be obtained by the author for the use or disclosure of their work. The main economic rights are the following:

- The right of reproduction or public communication that is done through broadcasting or display, the fixation of images and sounds;
- The right of public communication to an audience or group of persons without previously having the work distributed;
- The right to distribute the work through sale, rental, lending, among others;
- The right of transformation of the work either through a translation, dubbing, subtitling among others;
- The right of importation and border entry.

■ PROTECTION OF WORKS. Although Articles 2 and 2b of the Berne Convention sets - generically - the works that are eligible for protection; it is Legislative Decree 822 (Articles 5, 6, 7, 8 and 9) supplemented by Legislative Decree 1076, the standard responsible for setting the range of possibilities of protection via authorial. Following the signing of the Free Trade Agreements, the need to expand the range of protection has been noticed, being that today "information rights management" and the "effective technological measures are also protected by the Copyright Act."

■ REQUIREMENTS. The main requirement for a work to be eligible for protection by means of copyright is the Originality. Which is to say, the work must release a characteristic of its author, should lead the imprint of his personality. This criterion has been ratified by the national authority through a precedent of mandatory provisions that are established within Resolution No. 286-1998/TDC-INDECOPI.

■ WORK REGISTRY. Unlike Industrial Property, Copyrights need not be registered in order to be protected by the authorial way. Thus, Article 3º of the Legislative Decree 822 provides that the registration as an author is merely declaratory, which is to say, it does not constitute rights. Just the mere creation of the work in order for it to be the subject of rights (moral and patrimonial), which the author will need to ensure that their work has enough originality. Notwithstanding the foregoing, the competent national office, which in Peru is the Directorate of Copyright of the INDECOPI, has established certain requirements for those authors who wish to apply for registration of their works; for which are the following:

- Form F-ODA-04;
- The pay receipt of the corresponding administrative fee;
- If applicable, the authorization or assignment of rights indicating the rights granted; if it's onerous or not; the territorial scope on which the sale, duration, etc., are agreed upon.
- If applicable, the power of attorney; and
- If applicable and if the applicant is a legal entity, provide documents that prove their existence and representation.

■ **SCOPE OF PROTECTION.** Copyrights grant a protection that is different from the one that is conferred by industrial property rights. Thus Article 52^o of the national norm (Legislative Decree N° 822) states: Article 52: - *"The property right lasts for the life of the author plus seventy years after his death, whatever maybe the country of origin of the work, and is transmitted by death according to the provisions of the Civil Code. In joint works, the protection period is calculated from the death of the last coauthor."*

Unfair Competition

Unfair competition is any act related to Industrial Property, done within the scope of the business and contrary to honest commercial practices. Decision 486 is the Andean norm governing the treatment of unfair competition related to Industrial Property; Article 259 states:

"Constitute acts of unfair competition related to the industrial property, among others, the following:

- *Any act capable of creating confusion by any means whatsoever, in respect to the establishment, goods or industrial or commercial activities of a competitor;*
- *False allegations in the course of trade capable of discrediting the establishment, goods or industrial or commercial activities of a competitor; or*
- *Indications or allegations whose use, in the exercise of trade could lead the public to mistake the nature, mode of manufacture, characteristics, the suitability for use or quantity of the products."*

Meanwhile, the national norm Article 98 makes a clarification as to the types of unfair competition. For which the provision states: *Complaints of unfair competition in the forms of confusion and exploitation of the reputation of others that are related to some element of the registered industrial property, or well-known logos or trademarks, whether registered or not, will be the exclusive competence of the competent national authority in industrial property as appropriate, provided that the complaints be filed by the owner of the rights. It shall also be of competence in regards to the entities of industrial property, allegations of unfair competition, in regards to the modalities of confusion and exploitation of the reputation of others, which include items of industrial property and elements while not constituting the industrial property rights, which are related to the use of an element of industrial property."*

Note that both lists are not exhaustive of behaviors constituting unfair competition. This qualification remains open to any act related to industrial property which is made in a business field as long as it is contrary to honest commercial practices.

■ **INFRINGEMENT ACTIONS.** Violations of basic rules of economic competition can take many forms, from the illegal acts that are harmless to criminal acts intended to injure competitors or mislead consumers. In that sense: Complaints can be filed at the request of a party or *ex officio*.

- *Infringement Actions initiated upon application.* When an individual is considered affected by an act of unfair competition, the individual may request the competent national authority to pronounce on the legality of any act or business practices that is carried out to harm the individual. The procedures, requirements and other characteristics inherent to this type of procedure are provided in articles 99 to 110 of the national norm (Legislative Decree 1075).

- *Infringement actions initiated by its own initiative.* The Andean norm has incorporated in its Article 269, the possibility for unfair competition actions to be initiated by its own initiative. In that sense the Legislative Decree has stated through its Article 111 that in order to regulate the procedure, requirements and other features inherent to this type of procedure, the provisions for actions initiated at the request of a party shall be applied to what is relevant.

■ **DEADLINE FOR FILING INFRINGEMENT ACTIONS.** The actions for unfair competition have a prescribed deadline that is set by both the Andean and the national legislation.

The action for unfair competition pursuant to this Title shall lapse after two years from the recent commission of the unfair act, unless the internal legislations provide a different deadline.

→ Labor Law

Labor Contracts

In Peru, the norm that regulates the labor contracts and their diverse modalities is the Law of Productivity and the Competitiveness of Labor; henceforth known as LPCL and its Regulations. In reference to the labor contracts, this rule states that:

Article 4º.- *“In all paid personal services and subordinates; the existence of an employment contract for a specified amount of time is presumed. The individual employment contract may be freely held indefinitely or subject to special conditions. The first may be held in either verbal or written form; the second, under the circumstances and requirements provided by law. They can also be written contracts of part time basis that are without limitations”.*

Article 5º.- *“The services that by its nature are of labor, should be provided personally and directly by the employee as an individual. The condition is not invalidated should the employee be assisted by direct family members that depend on him, if that is how the services are normally provided”.*

Recruitment methods contemplated in our labor system

The relationship that comes about due to a labor contract may be in terms of lengths that are indefinite or undetermined. Article 4º of the LPCL establishes the presumption that all labor relationships and therefore all labor contracts are of an indefinite duration. Presumption rebutted. Nevertheless, the norm supports three general contracting assumptions:

- Indefinite hiring that is either verbal or written
- Subject to the modality that requires that it be written and
- That it is a part time hiring

Typical Contract

A typical labor contract is characterized by the following notes:

- It is a full time labor contract, that is fulfilled under the terms of a legal or habitual shift
- It is executed under a labor of contract of an indefinite duration, that is under an employment contract that will prolong its validity regardless of time, except for non-compliance by one of the parties or by stubborn external causes that make it impossible to execute
- Work is done in a location that is provided by the employer and
- This is work that would pay the individual as an employee

Fixed termed contracts or subject to special conditions

While the legislation provides the possibility of having contracts that are subject to special conditions, it establishes certain requirements for holding fixed-term contracts.

- The existence of an objective cause
- Written form
- Administrative verification
- Maximum duration

Probationary period

It governs the statutory period or what was established by convention as provided in Article 10º of the LPCL.

Article 10º.- *The probationary period is three months long, after which the employee attains the right of protection against arbitrary dismissal. The parties may agree upon a longer period under certain labor circumstances where an extension would be justified due to a training requirement or an adaptation period or because of their nature or degree of responsibility. The*

extension of the probationary period for skilled or trusted employees must be submitted in writing and must not exceed six months from the point of origin and no more than a year for management personnel.”

Once the probationary period is completed, these employees are entitled to job security during the time of the contract.

Rights and benefits

They are entitled to receive the same benefits that by law, agreement or custom correspond to employees that are bound to a contract of an indefinite term.

Types of contracts

TEMPORARY CONTRACTS

TYPE	OBJECTIVE CAUSE	MAXIMUM DURATION
Due to onset or increased activity	<ul style="list-style-type: none"> ■ The initiation of the productive activity ■ The subsequent installation or opening of new establishments or markets ■ The initiation of new activities and ■ The increase of ongoing activities within the same enterprise 	3 years
Due to Market Needs	<p>Aims to address short-term increases in production that were caused by substantial changes in market demand and should be budgeted to include one of the following situations:</p> <ul style="list-style-type: none"> ■ That are not part of the daily company duties or ■ That if the increase is due to regular duties and of which can not be covered by current staff 	5 years
Due to Corporate Restructuring	It is held to replace, extend or modify the activities within the company. Overall, it is a variation of the technical character in regards to the machinery, equipment, facilities, media production, systems and production procedures	2 years

ACCIDENTAL CONTRACT

TYPE	OBJECTIVE CAUSE	MAXIMUM DURATION
Occasional Contract	It is that which is held between an employer and an employee in order to meet temporary needs that are different from the usual activity of the workplace	6 months
Provisional Replacement Contract	It aims to replace a permanent staff member of the company whose legal working status has been suspended due to one of the following reasons: <ul style="list-style-type: none"> ■ Any sufficient cause under applicable law or ■ By treaty provisions that are applicable to the workplace or ■ When the incumbent for administrative reasons, must undertake other duties within the workplace 	This contract shall be exhausted upon the return of the incumbent
Emergency Contract	It aims to meet needs caused by a fortuitous event or by force majeure.	That which is necessary.

WORK OR SERVICE CONTRACT

TYPE	OBJECTIVE CAUSE	MAXIMUM DURATION
Specific work or service contract	Those that have a previously established objective.	That which is necessary. May be subjected to renewals.
Intermittent Contract	Its purpose is to meet business requirements which by their nature are permanent but discontinuous. It may be performed by the same employee who shall be entitled to preference when hiring.	
Temporary Contract	Its purpose is to meet the rotating needs of the enterprise that are only done at certain times of the year and are subject to be repeated in each cycle according to the nature of the productive activity.	

Part Time Contracts

It is called Part Time Work when a contracted employee works less than four hours on a daily basis. Our legal system accepts unlimitedly the concept of part-time contracts, as long as they are in written form and that they have administrative approval (Article 4° LPCL and Article 13° of the D.S. N° 001-96-TR) due to the fact that such contracts should be known by the Administrative

Authority of the Workplace within 15 days from its commencement for registration purposes.

If the work shift does not reach four hours on a daily basis, the employee is not entitled to certain individual rights, such as job stability in regards to the outbound norm (Article 22° LPCL), Compensation for Time of Service (Article 4° of the D.S. 001-97-TR) and vacations, all of which are excluded by Article 12° including that of D. Leg. 713, that is in accordance with Article 11° of the D.S. 001-96-TR, therefore in all other rights, they should be considered to be understood.

Formative Labor Arrangements

The Employment Advocacy and Vocational Law; henceforth known as LFPL, which was approved by D.S. N° 002-97-TR, Law 28518 – The law in regards to Formative Labor Arrangements and its D.S. 007-2005-TR. The norm that regulates the special contract arrangements are detailed in the following:

FORMATIVE ARRANGEMENT	DESCRIPTION	GENERAL CHARACTERISTICS
<p>Apprenticeship:</p> <ul style="list-style-type: none"> ■ Predominantly in the Company (PE) ■ Predominantly in the Vocational Training Center: Pre-professional Practice (PCF) 	<p>Part of the training process is performed in the productive units of the companies, prior training and supplementation is done at a Vocational Training Center.</p> <ul style="list-style-type: none"> ■ (PE) The training process is done mostly in the company. ■ (PCF) It enables the trainee, during their student status, to apply their knowledge, skills and aptitudes while having a real work situation performance session. 	<ul style="list-style-type: none"> ■ There should be a signed Learning agreement between the sponsoring company, the apprentice (who has at the minimum concluded his primary studies and is at least 14 years old) and a Vocational Training Center. ■ The length is directly attached to the extension of the training process. - PE) The workday should not exceed 8 hours or 48 hours weekly. - (PCF) The workday is not more than 6 hours or more than 30 hours per week.
<p>Professional Practice</p>	<p>It seeks to consolidate the apprenticeships that are acquired through professional training, in order to perform under real working situations.</p>	<ul style="list-style-type: none"> ■ An agreement is signed between a company and a recent graduate from a Vocational Training Center length does not exceed 12 months. ■ The work day does not exceed 8 hours per day or more than 48 hours per week. ■ The grant mustn't be less than the RMV when it reaches the maximum expected time for this modality.

<p>Youth Job Training</p>	<p>Its intended for young adults that are between the ages of 16 and 23, that haven't completed or interrupted their basic education or those who upon finishing their basic erudition have not pursued superior studies (technical or university), in order to acquire knowledge and skills while working so that they may be incorporated into the economic activity of a specified occupation.</p>	<ul style="list-style-type: none"> ■ The company must design Specific Programs of Youth Work Training ■ The training should preferably be carried out in the workplace or in a Vocational Training Center, School-Workshops or someplace similar. ■ The number of beneficiaries should not exceed more than 20% of the total amount of personnel of the location or specific occupation. ■ The work day does not exceed 8 hours per day or more than 48 hours per week. ■ The grant mustn't be less than the RMV when it reaches the maximum expected time for this modality.
<p>Internship:</p> <ul style="list-style-type: none"> ■ Internship with the Company. (PE). ■ Internship for Teachers and Professors (PD&C). 	<ul style="list-style-type: none"> ■ PE: Aims to link the beneficiary with the world of work and business in order to contrast what they learned in the Training Center. ■ PD&C: Links teachers and professors from the Vocational Training System with the social economical, technological and organizational changes that arise in the productive sector. 	<ul style="list-style-type: none"> ■ There is an Agreement between a company, a beneficiary (14 years of age or older) and a Vocational Training Center. Its term of length does not exceed 3 months. ■ The grant for high school students should not be less than 5% of the RMV. Under other circumstances it is not less than 30% of the RMV. ■ PD&C: There is an Agreement between the company, a teacher or professor and Vocational Training Center. Its term of length should not exceed 3 months. The grant should not be less than 30% of the RMV.
<p>Refresher Course for Labor Reintegration</p>	<p>Seeks to improve the employability with the possibility of reinserting unemployed workers (laid off from the private and public sector) that are between 45 and 65 years of age and that currently find themselves in a long unemployment spell that exceeds 12 months continuously.</p>	<ul style="list-style-type: none"> ■ There is an Agreement between a company and a beneficiary. ■ The company designs a Training Plan and Refresher Course. ■ The maximum amount exceed more than 20% of the area personnel or a specific occupation or more 10% of the total amount of workers with a direct working relationship.

Worker's Rights

■ EARNINGS. The concept is included in Article 6° of the LPCL:

Article 6.- *"Constitutes compensation under all legal purposes that the worker receives in full for services rendered, either monetarily or in kind, irrespective of the form or denomination that it may have, as long as it is out of freewill. The sums of money that are given to the worker directly for meals such as breakfast, lunch, snacks or dinner, have a remunerative nature. Compensation isn't countable for purposes of calculating the inputs or contributions to social security as well as to any right or labor related benefit in regards to the value of food allowances that are granted in the form of indirect provision".*

As per Article 7 of the LPCL, remuneration is not constituted for any legal purposes of the items set forth in Articles 19 & 20 of the Unified Text of the Law on Compensation for Length of Service, approved by D.S. 001-97-TR.

Article 19° - *"Countable remunerations are not considered for the following:*

- *Extraordinary bonuses or payments that are occasionally given to the worker as a donation by the employer or by a previous collective agreement or as accepted within the conciliation proceedings or mediation or established by the resolution of the Administrative Labor Authority or by arbitration. In this concept, the allowance for closing specification is included.*
- *Any form of involvement in the earnings of the company.*
- *The cost or value of working conditions;*
- *The Christmas Basket or something similar;*
- *The cost of transportation, whenever assistance is subjected to the workplace and that it reasonably covers the respective transport. This concept includes the set amount that the employer grants by individual or collective agreement, as long as it complies with the requirements previously mentioned.*
- *The education allowance or bonus as long as it is for a reasonable amount and it is duly substantiated.*
- *Allowance or wine gifts for birthdays, marriage, childbirth, death and those of similar nature. Likewise, the allocations that are paid for certain festive occasions as long as they are consequence of a collective bargaining agreement.*
- *The assets that the company grants its employees of its own production in reasonable quantities for direct and family consumption;*
- *Those amounts that are disbursed to the employee for performance of work or duties in order to cover transportation, travel, entertainment and wardrobe expenses and that within reason meet the objective and do not constitute a benefit or an economical advantage to the worker.*
- *The diet directly provided by the employer that meet the conditional quality of the work as being essential to the service delivery, meal allowances that are granted under the modality of indirect supply and in accordance to applicable law or when resulting from legal mandate.*

Article 20.- *“Food that is provided directly by the employer that is within the quality of working standard that is essential to the service delivery or when resulting by legal mandate is also not included in the countable remuneration.*

Our legislation provides for a referred Comprehensive Compensation, which is one that is agreed annually with the employee that receives a monthly salary that is not less than (2) Tax Units (currently at S/. 3,650.00), and includes all conventional and legal economic benefits that are applicable to the entity, except for profit sharing (Article 8 LPCL).

The Minimum Living Wage

It is set by the State. A worker who works an ordinary working day cannot receive less than S/ 750.00 (monthly), which is actually the minimum living wage.

■ **WORKING DAY.** Article 25° of the Political Constitution of the State establishes a limit of 8 hours per day or 48 hours per week as a maximum allotment of time for an ordinary workday. This 48 hours weekly limit also applies to accumulative or atypical workdays.

An ordinary workday is the maximum allotted time during which the worker is at the employer’s beck and call for service delivery. It is not possible to require the worker that provides an effective delivery of services on an ordinary workday to exceed the indicated limit except if the employee agrees to it or is in any of the cases that are established by law.

In regards to cumulative arrangements of work or atypical jobs, the eight workday limit does not apply, due to the supposed fact that the working activities imply continual service delivery that exceeds 8 hours per day; however, the individual will work less days per week.

Legislation 854 contemplates supposed specialties that are not included in the maximum workday and therefore are not entitled to overtime pay when the job exceeds the normal working day, which are:

- Management employees, those who exert the overall representation of the employer in front of the other workers or third parties or those that substitute or that share management duties or control or where the result of the business depend on the responsibility or activity of the same, in accordance with Article 43 of the LPCL;
- Standby intermittent service delivery workers or those who provide supervision or custody, that regularly fulfill their activities alternatively or with periods of inactivity; and
- Workers that are not subject to immediate superior supervision which are those who perform their duties or part of the same without immediate employer supervision or who work part time or are completely out of the workplace, resorting to the individual to account for their own work

and carry out the pertinent coordination.

■ **WORK SCHEDULE.** The employer has the authority to establish the work schedule, which is to say the dispatching of the work schedule throughout the day, taking into account the start time as well as the shift end time. As required by Article 6 of D. Legislation 854, the employer is empowered to modify the work schedule without altering the hours worked (Work Day), to which a standard procedure in regards to the aforementioned must be followed. The allotted meal time should not be less than 45 minutes and is not included in the work day or in the work schedule.

■ **NIGHT SHIFT.** The night shift is understood to be between 2200 and 0600 hours. The night shift worker must not receive a compensation that is less than current minimal living wage and must have an increased rate of 35%.

■ **OVERTIME.** Work that is rendered outside of an ordinary workday and is voluntary both and its execution and in its provision. The labor time that exceeds the daily workday or existing workweek within the workplace should be considered overtime and is paid an agreed upon fee that must not be less than 25% of the value of the time value of regular compensation for the first two overtime hours and 35% from the third hour on. The overtime can be performed before or after the time of entry or exit. Overtime can also be compensated by granting the equivalent time off.

■ **PAID BREAKS.**

- *Annual Leave.* Vacations rights are regulated by D. Legislation 713 (7/11/91), which gives the worker the right to 30 calendar vacation days for each year of service. In order to acquire the right to a vacation time, a record of minimum workdays within the space of one year must be met. The required work year is calculated from the start of employment or from whenever the employer determines it if it is to compensate for the fraction of relevant services.

Whenever it's the opportune time for a rest period, it should be agreed upon with the employer and employee, taking into account the company's needs and the interest of the worker. In the absence of an agreement, the employer defines. Under no circumstances may vacations be granted when the worker is incapacitated by illness or accident. This standard does not apply if the incapacity occurred during the vacation period.

Vacation pay should be allotted prior to it commencing. The worker should be able to enjoy their rest period without interruption, even though the worker can utilize their vacation time in increments of no less than seven days if they request it in writing. Likewise, the worker may reach an agreement with the employer whereby two consecutive periods are accumulated, always being able to take advantage of a minimum of seven days after one year of service.

Under the same standard, the worker may freely stipulate up to 15 days of their vacation period, with the following compensation of 15 days of remuneration. This agreement should be in done in writing. The time limit for the enjoyment of the vacation is one year, which states that after one year of service, the worker has earned the right to a vacation, and would take advantage of it within the following year. If that does not take place, the worker earns the right to the denomination of "triple vacation pay".

- Payment for services rendered;
- Payment for vacations earned by not enjoyed; and
- A stipend by way of indemnification for not being able to enjoy the rest period. This indemnification is not subject to tax withholding or any other retention.

The payment amount should be what the employee shall be receiving at the opportune payment interval.

- *Mandatory weekly rest period.* The employee has the right as a minimum of 24 consecutive hours for resting on a weekly basis, of which should be preferably granted on Sunday. Article 2 of the D. Legislation 713 provides for the possibility of establishing alternative arrangements or cumulative working hours or breaks, with due regard to the owed proportion or designating as a rest day other than Sunday, by determining the day when the workers are able to enjoy their substitute respite individually or collectively.

If the employee works on their mandatory weekly rest day or on a National Holiday, without being provided an alternative rest period, the employee shall have the right to receive compensation for services rendered with a pay hike of 100%. Payment for the day of rest is equal to an ordinary workday and shall be paid in a manner that is proportional to the number of days of service delivery.

■ **PROFIT SHARING.** Article 29 of the Political Constitution of 1993, recognizes the worker's right to participate in the profits of the company. In accordance to D.L. 893, workers participate in the profits of the company, via the distribution of a percentage⁵. Aforementioned percentage is distributed in the following manner:

- 50% depends on the number of days worked by each employee, that are understood to be real and effective work days. To that effect, the amount is divided by the total sum of days worked by all employees and the result that is obtained is multiplied by the number of days worked by each employee.

- 50% in proportion to the earnings of each employee. To that effect, the stated sum is divided by the total amount of compensation of all the employees corresponding to the fiscal year and the obtained result is multiplied by the total of compensation that corresponds to each employee in the fiscal year.

In respect to each employee, profit sharing has the equivalent of 18 compensations as a maximum limit. Cooperatives, self-managed enterprises, civil societies and enterprises with less than twenty (20) employees are excluded from the participation mandate of profit sharing.

■ **GRATUITIES.** There exist two gratuities per year for the private sector, one for Christmas and the other for the Patriotic Holidays. Both of which are established in Law 27735, that states that they must be paid in the first half of each month of July and December respectively. The regulation states that the only requirement for its perception is maintaining gainful employment upon payment of such benefit or failing that, finding themselves to be enjoying their vacation, on leave with pay or receiving appropriate subsidies.

If the employee has less than six months on the job, they should receive a percentage of the gratification that is based on months worked.

■ **COMPENSATION FOR TIME OF SERVICE (CTS).** It is a precautionary social benefit against any contingency that may bring about the cessation of work and the advocacy of the worker and their family (Article 1 of the Law of CTS, D.S. 001-97-TR.) The payment of this benefit is realized through bi-yearly deposits in the first half of the month of May and November of each year.

The services that generate the right to having CTS are those that are rendered in Peru or abroad as long as the employee had been hired in Peru. Unjustified leaves of absence and uncountable days are deducted by the rate of one thirtieth per day. The following are countable by exceptional manner: absences due to a work related accident, occupational illness or illnesses accredited for up to 60 days per year; pre and post natal rest days; those due to flawed suspension of work (payment is maintained by the employer); strike days that haven't been declared to be inadmissible or illegal; and earnings accrued during a dismissal procedure.

The CTS when it accrues monthly should be granted on the basis of the current compensation at the moment of carrying out the bi-yearly deposit to which the definition of compensation that is contained in Articles 6º and 7º of the LPCL and 19º and 20º of the Law of CTS is considered.

Deposits are made in the financial institution chosen by the employee. If this doesn't comply in notifying the employee within a period not exceeding from April 30 or from October 31 respectively, the employer may choose the financial institution where deposits shall be made. With the depository being chosen, the employee must indicate if the deposits shall be done with either domestic or foreign currency.

The employer must provide, under fee, within five working days of the deposit, a duly signed settlement, indicating the name of the employee, the amount, period of service and the name of the representative of the undersigned employer.

Suspension of Employment

The current labor legislation has developed a coarse model in regards to the subject of the suspension (Article 11° LPCL), stating that it can be perfect or imperfect. In the first of the two, it suspends the service delivery as well as the compensation, while in the second case, the obligation to pay compensation remains, but not the service delivery.

Article 12° of the same regulation, establishes cases when the suspension of the work contract is necessary, such as the case of temporary disability, sickness, a proven accident, on vacation, and a disciplinary sanction, among others. In the case of a disciplinary suspension, the regulation has not established the causes that give rise, which is to say the offenses that are punishable by suspension, which is understood to be at the discretion of the employer, to which falls the obligation to impose the sanction according to the offense committed.

Termination of Employment

■ **DISMISSAL.** Article 27° of the Peruvian Constitution of 1993 delegates the Law the function of providing adequate protection to employees against arbitrary dismissal. The current Constitution with this brief statement, has given the Law the task to give substance to the concept of “adequate protection”.

The protection against arbitrary dismissal is embodied in the requirement that the dismissal must be supported by a justifiable cause. This is known as “causality of the dismissal”, protecting the employee from any act of the employer that aims to put an end without foundation.

Article 34° of the LPCL establishes that in the case that the dismissal is considered to be arbitrary for failing to provide cause or not being able to prove it in court, the employee has the right to compensation of one indemnification that is equivalent to a remuneration and half for each year of service, with a ceiling of twelve compensations. This legal provision provides job stability during a dismissal that is determined to be improper.

However, since the year of 2002, the Constitutional Tribunal, through multiple judgments, has established a typology of dismissals that compliment the legal regulation aforementioned, establishing the possibility that the employee opt to be reincorporated or be eligible to receive one special indemnification for the dismissal. The previously mentioned is plotted in the following table:

TERMINATION TYPE	CHARACTERISTIC	EFFECT
Without due cause	No cause is expressed	At the employee's choice, either reincorporation through a constitutional judicial court mandate (protection action) or compensation payment for an unfair dismissal through the ordinary labor courts (arbitrary dismissal).
Fraudulent	Invention of a cause or abuse of the employee while exerting duress upon the same	At the employee's choice, either reincorporation through a constitutional judicial court mandate (protection action) or compensation payment for arbitrary dismissal through the ordinary labor courts (arbitrary dismissal).
Invalid	Discriminatory dismissal that is based on grounds provided for in Article 29° of the LPCL	Reincorporation through the ordinary labor courts (invalid dismissal).
Dismissal in breach of fundamental rights	Must be reasons other than those provided for in Article 29° of the LPCL	At the employee's choice, either reincorporation through a constitutional judicial court mandate (protection action) or compensation payment for arbitrary dismissal through the ordinary labor courts (arbitrary dismissal).
Dismissal with attribution of a just cause	Dismissal is attributed in the commission of a serious offense. The procedure followed is the one that is foreseen but when subjected to standard procedure, it is determined that a serious fault is nonexistent.	Compensation payment through the ordinary labor courts. Submission in to constitutional justice does not apply due to the fact that this is a residual procedure.

■ **INDIRECT DISMISSAL.** It is a form of dismissal from an employment relationship that emanates from the will of the employee. This takes place when the employee, prior to employer conduct or attitude, considers that the employer has not complied with the job contract, in such a way that it makes it unviable to continue the rendering of services.

Provided for in the cases of harassment that are covered by Article 30° of the Law of Productivity and Labor Competitiveness, which are:

- Failure to pay compensation at the appropriate interval, unless there are reasons of force majeure or unforeseeable circumstances that are duly verified by the employer.

- Causeless reduction of payment or in category.
- The transfer of the employee to a location that's distinct from the one where the rendering of services was done habitually, with the intent to cause detriment.
- Failure to comply with health and safety measures that could affect or put at risk the life or health of the employee.
- An act of violence or serious verbal harassment to the detriment of the employee or their family.
- Acts of discrimination, based on sex, ethnicity, religion, opinion or language.
- Acts of moral turpitude, sexual harassment and all acts that constitute dishonest attitudes that affect the dignity of the employee.

In order for the employee to bring forward a judicial act for any of the aforementioned motives, a prior summon should be given to the employer in writing along with a reasonable period of time that is not less than six calendar days in order for the employer to be able to make their defense or to be able to amend their conduct should that be the case.

Having completed the indicated procedure, the employee has the option of bringing forward a judicial lawsuit against the employer for being dismissed unjustifiably in order to obtain the special compensation for arbitrary dismissal.

■ **INVALID DISMISSAL.** This involves a dismissal that is based on discriminatory or prohibited reasons, and the following are the reasons that are specified in Article 29° of the LPCL:

- Union membership or the participation in union activities.
- Being a candidate to represent the employees or acting or having acted in that capacity;
- To submit a complaint or to participate in a process against the employer before competent authority, except when serious acts of violence or serious verbal harassment or grave indiscipline are present;
- Discrimination that are based on sex, ethnicity, religion, opinion or language.
- Pregnancy, should the dismissal occur during the gestation period or within the subsequent 90 days.

The employee has the option to bring forward a judicial demand against the employer via an act of invalid dismissal in order to be reincorporated to the job.

Group Rights: freedom of association, collective bargaining and strike.

■ **FREEDOM OF ASSOCIATION.** Freedom of Association is a constitutional recognized right (Article 28, including 2) which empowers workers to organize unions and to freely affiliate in those that are already existent – which also implies the ability of disaffiliation or not to affiliate to the same – with the objective of defending and promoting the economic and social interest of the workers.

In accordance to the Unified Text of the Law of Collective Work Relationships (LRCT) which is approved by D.S. 010-2003-TR, first level organizations are recognized as Unions and may be of a company, an activity, of guild or of various occupations. In order to develop a union, there is a requirement of 20 workers in the case that it would be of a company or 50 for all other types of unions. In the case of lacking the minimum amount requirement in order to constitute a union, the workers can name delegates to be their representatives.

Various unions can coexist within the same company. Two unions may form a collective of superior level called a Federation. Likewise, two Federations can constitute a Confederation.

■ **COLLECTIVE BARGAINING.** In accordance to the LRCT, the Collective Work Agreement has three parts:

- A regulations part, which would regulate determined rights and obligations of the workers which form part of the agreement (compensation, work conditions)
- An obligations part that generate collective rights for the same subjects who have come to an agreement (concession of a location for the union), and
- One part bounding that is available to the one that governs and to what is the objective and the governing period.

The regulations part is the only one that constitutes a source of law and it automatically modifies the individual work relationships without the need of an incorporation act and it constitutes a necessary relative regulation right, in such a way that the work contracts would not be able to establish lesser benefits.

As for the effectiveness of the Collective Bargaining Agreement, this could be general, which is to say, to govern all the workers of the company or limited, which is to say if it only affects those whom are affiliated with the union which has negotiated the mentioned Agreement. In accordance to the LRCT, in order for an Agreement to have overall efficiency, the Union should affiliate the absolute majority of the company workers, which is to say, the organizational union must possess negotiable legitimacy.

The law has left ample latitude for all parties in order for them to be able to come to terms with the finality of being able to resolve their collective negotiations. The first stage is referred to as the direct negotiations stage between the parties, should that fail, it would be passed along to a work Administrative Authority with the purpose of convening a Board of Conciliation and if there is no agreement, the Union may opt to refer the dispute to arbitration or to declare a strike.

■ **RIGHT TO STRIKE.** It is the collective suspension of work that is agreed by the majority and it is processed voluntarily and peacefully by abandoning the workplace. The declaration of a strike must be verified by a Public Notary or Magistrate and must comply with certain formalities such as the aim of defending the rights of workers, be adopted by a majority of voting members

that are attending the meeting that was called for this purpose and should be communicated with prior anticipation to the employer.

If the strike complies with all the prerequisites, the employer shall be prevented from hiring workers, withdrawing company benefits or prevent a hazard in thereof. Irregular modalities are forbidden to strike as an untimely halt, work at a slow rhythm pace, deliberate reduction in performance, obstruction of entry to the workplace, etc.

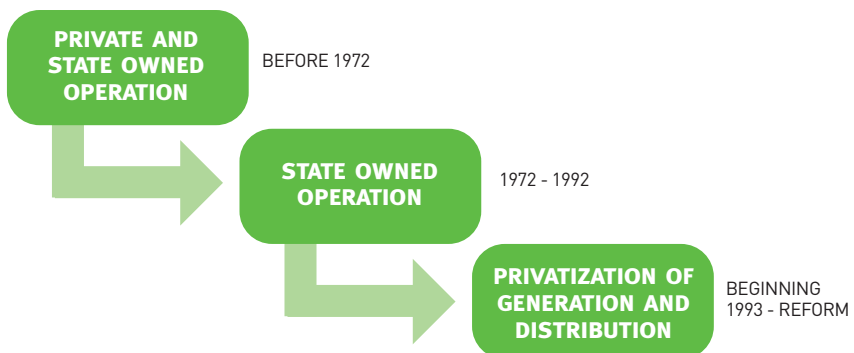
The strike shall continue unless it is declared to be illegal by the Work Administrative Authority; likewise, if a strike takes too much time, seriously jeopardizing a company or productive sector or if it results in acts of violence, the Executive Power could order the resumption of work. In case that does not take place, the strike may remain indefinite until the workers themselves decide to end it.

In regards to strikes in essential services or of indispensable labors to the company, the workers should ensure continuity of key personnel in order to impede total interruption and to ensure the continuity of activities that demand it or the immediate resumption of work once the strike has been called off.

→ Electricity Sector in Peru

The activities in the Electricity Sector are regulated since 1992, by the Law of Electrical Concessions (D.L. N° 25844-) and Regulation (D.S. N° 009-93-EM). These standards established a reform in the sector, separating the activities of Generation, Transmission, Distribution, and Commercialization. Prior to the issuance of the standards mentioned, the provision of electricity was held exclusively by the Peruvian Government controlled company Electroperu (which vertically integrated the distinct operations of the Electricity Sector).

Specifically, the Electricity Sector in Peru evolved in the following manner:



Over time, and with the aim of adapting the electricity market to the developments that the new scenarios have required, standards were issued to ensure the efficient development of the generation of Electric Power (law N ° 28832), promoting further mechanisms of investment and tax benefits to power generation projects.

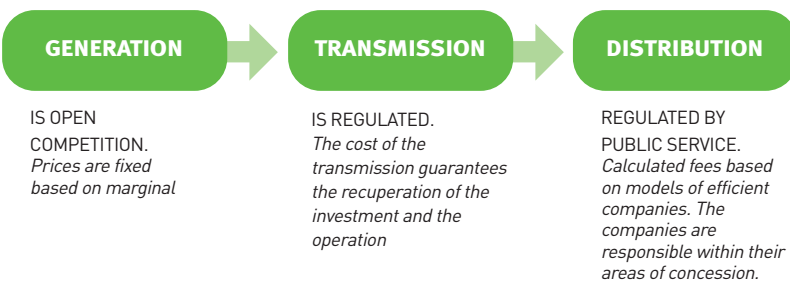
Efficient use of Natural Gas	D.Leg. N° 1041
Promotion of renewable energy generation projects	D.Leg. N° 1002
Accelerated depreciation	D.Leg. N° 1058
Advanced Recovery of the General Sales Tax on companies that use water resources and renewable energy	Law N° 28876

Characteristics of the Peruvian Electricity Market

The Peruvian electricity market is disintegrated, eliminating all kinds of reserve and State monopoly. The law on electrical concessions establishes that the generation, transmission and distribution activities cannot be performed simultaneously by a single company, promoting a disintegration of the electrical activities.

The Peruvian model promotes competition in generation and providing open access to transmission, regardless of the existing transmission and distribution monopoly. You cannot have transmission lines that go along the same routes due to the high costs.

The principal characteristics of the Peruvian model are show in the following:



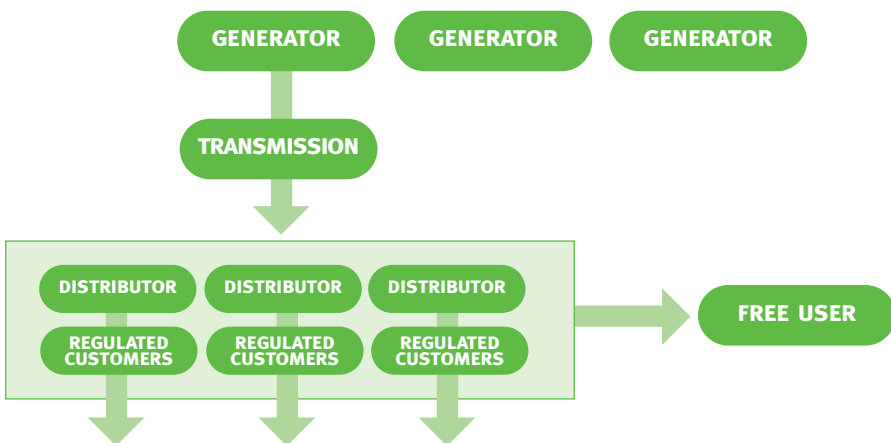
In addition, it is necessary to take into account that the electrical service provides a free market and a regulated market:

■ **FREE MARKET: SUPPLY AND DEMAND.**

Users whose maximum annual demand are more than 200 kW, until 2500 kW, have the right to choose between the condition as a Regulated User or Free User. The Users, whose maximum annual demand is more than 2500 kW, have the condition to be Free Users. Free users are supplied by distributors, generators, or possibility of self-generation. More than 50% of the transactions in this market relate to the mining sector.

■ **REGULATED MARKET: STANDARD PRICE IS REGULATED.**

Constitutes a public service of electricity. Regulated users (with annual consumption less than 200 kW) are supplied exclusively by the distributors within the area of concession.

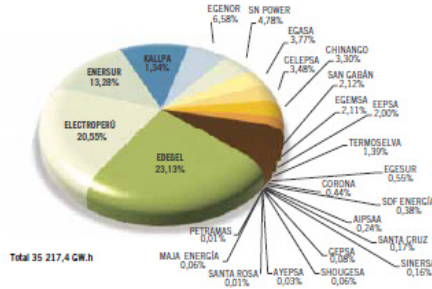


Generation

It is important to take into consideration the following concepts:

- **POWER:** maximum production capacity of a unit of generation at any given time
 - **ENERGY:** Production flow of a unit of generation at a certain period of time (actual production)
- The generation is the production of energy in blocks, beginning from a primary or secondary source of energy. The production of electric energy during the year 2011 was 35 217, 4 GW.h, which represented an increase of 8.6% compared to the year 2010, which was 32 427 GW.h. Of the energy produced, 57,94% was water sources, and 42,06% was thermal sources.

The participation of generation of the principal companies in the Electricity market in Peru is shown in the following graph:



Source: Annual Report 2011 - COES

With regard to the technologies of generation, in the Peruvian electrical market there exists a predominance of water sources compared to thermal sources, as the following participatory percentages show:



Source: Annual Report 2011 - COES

Likewise, in the Peruvian electrical market, natural gas represents an important contribution in the coverage of the power demanded (close to 39%).

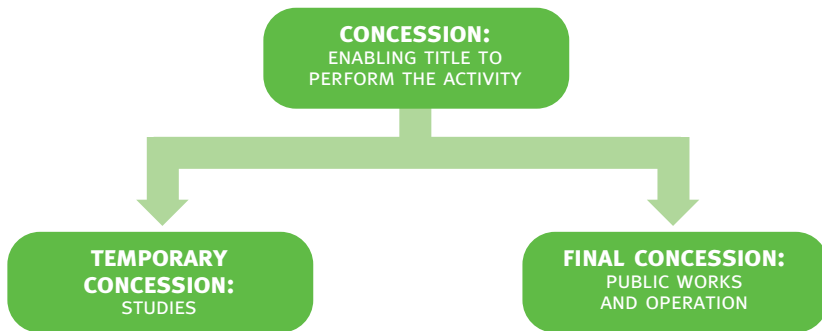
The generators in Peru are:

- Agroindustrial Paramonga S.A. A.
- Aguas Y Energía Perú S.A.
- Celepsa Compañía Eléctrica El Platanal S.A.
- Chinango S.A.C.
- DukeEnergyEgenor S. En C. Por A.
- Edegel S.A.A.
- Eléctrica Santa Rosa S.A.C.
- Empresa de Administración de Infraestructura Eléctrica S.A.
- Empresa de Electricidad del Perú S.A.
- Empresa de Generación Eléctrica de Arequipa S.A.
- Empresa de Generación Eléctrica del Sur S.A.
- Empresa de Generación Eléctrica Machupicchu S.A.
- Empresa de Generación Eléctrica San Gabán S.A.
- Empresa Eléctrica de Piura S.A.
- Empresa Generadora de Energía Del Perú S.A.

- Enersur S.A.
- Esco Compañía De Servicios de Energía Sac
- Hidrocañete S.A.
- Hidroeléctrica Santa Cruz Sac
- IllapuEnergy S.A
- Kallpa Generación S.A.
- Maja Energía S.A.C
- Petramas S.A.C
- SDF Energía Sac
- Shougang Generación Eléctrica S.A.A.
- Sindicato Energético S.A.
- Sn Power Peru S.A.
- Sociedad Minera Corona S.A.
- Termoselva S.R.L.

Authorization and Concessions

Are awarded by the Ministry of Energy and Mines. Free up to 0.5 MW



Requires the final concession to develop each one of the following activities:

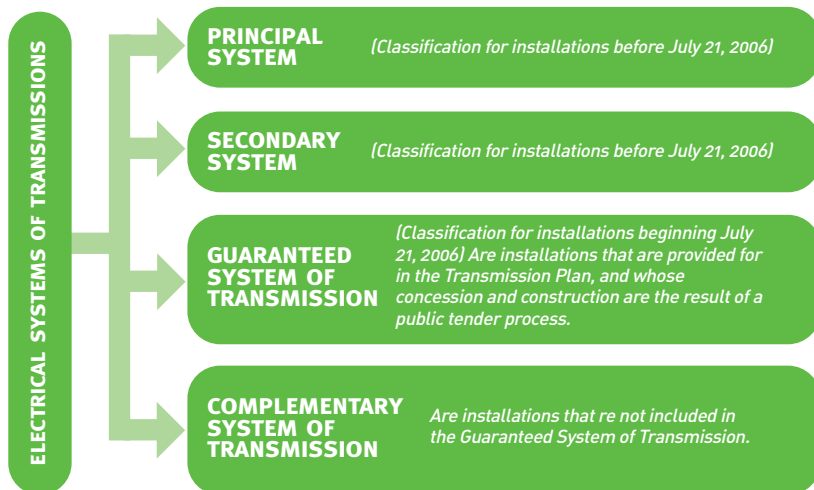
- The generation of electrical energy that utilizes water resources, with installed power above 500 KW;
- The generation of electrical energy with renewable energy, with installed power above 500 KW.

With regard to the authorizations, our legal system requires authorization to develop activities of thermoelectric generation, when the installed power is greater than 500 KW.

Transmission

It constitutes a natural monopoly. As it is known, the transmitter takes the power that is given from the generator, transporting it from one point to another (transmission line). A national interconnected electrical system is extremely important because it allows energy to come from the more efficient plants (economically) to any point that is within the system. In addition, allows you to expand the possibilities of power supply and cover a larger population of electricity.

■ CLASSIFICATION.



■ **CONCESSIONS.** The transmission of electrical energy requires a concession, when the installations affect the property of the Government and/or require the imposition of the right of way. These are the transmitting companies in Peru:

- Abengoa Transmisión Norte S.A
- Compañía Transmisora Norperuana S.R.L
- Consorcio Energético De Huancavelica S.A.
- Consorcio Transmantaro S.A.
- Eteselva S.R.L.
- Interconexión Eléctrica Isa Perú S.A.
- Red De Energía Del Perú S.A.
- Red Eléctrica Del Sur S.A.

■ **DISTRIBUTION.** Distribution is by means of the set of transmission of lines with low levels of voltage, sub-stations and transformers. Concession is granted by geographical area. The distributors who operate in Peru are:

- Electro Sur Este S.A.A.
- Electro Sur S.A.
- Electrocentro S.A.
- Electroquinas S.A.A.
- Electronoroeste S.A.
- Empresa De Distribución Eléctrica de Lima Norte S.A.A
- Empresa Regional De Servicio Público de Electricidad Del Norte S.A.
- Empresa Regional De Servicio Público de Electricidad Electronorte Medio S.A.
- Luz del Sur S.A.A.
- Sociedad Eléctrica del Sur Oeste S.A.

■ LEGISLATIVE DECREE N° 1002- SUSTAINABLE DEVELOPMENT OF THE PERUVIAN ELECTRICAL MARKET. Priority action in the sustainable development of energy is the promotion of Renewable Energy, as a tool to be carried out within the regulatory (legislative) framework. In this sense, the Legislative Decree N° 1002 is important because it generates *“incentives to promote the investment of the generation of electricity with the use of renewable sources of energy, encourage scientific investigation and technological innovation, as well as the realization of projects that qualify as Mechanisms of Clean Development, and, obtaining its registration, the respective Certificates of Reduction of Emissions-CRE that can be negotiated with companies from Industrialized Countries that account for these reductions of GEI as part of the quantitative goals that were committed to in the Kyoto Protocol”*

Some of the related details included in the Legislative Decree N° 1002:

- *Declaration of national interest and participation of the energy with Renewable Energetic Resources (RER) in the matrix of the generation of electricity.*

- *Renewable Energetic Resources: Biomass, Wind, Solar, Geothermal, Tidal, Water energy whose capacity installed does not exceed 20 MW.*

- *Commercialization of energy and Power generated with the RER (Renewable Energetic Resources)*

- Generation of electricity from RER takes precedence for the daily dispatch, considering the cost variable of production equal to zero.
- For the sale of production of electrical energy, the holders must put their energy on the short term market the price that results in that market.
- If the marginal cost is less than the specified rate, the energy is placed in the short term market at the given price in the market plus the premium fixed by the regulatory agency in Peru, which is called OSINERGMIN.

- *Determination of regulated rates:*

- Guarantees an annual profit of 12%

- Auction of allocated premiums

- Dispatch and access to networks of electrical transmission and distribution

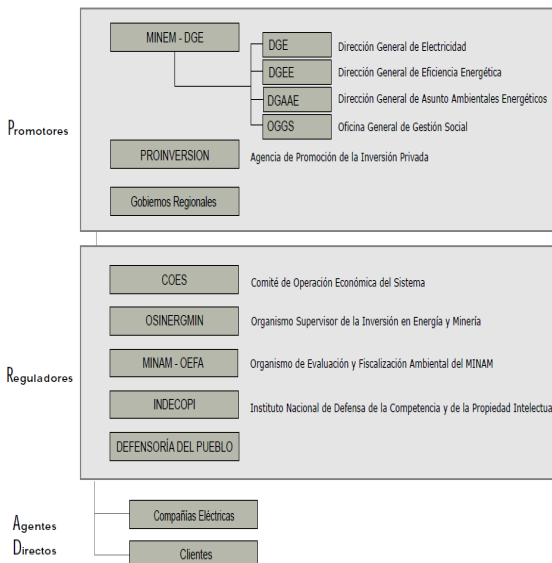
- Subject to capacity in the systems of transmission and/or distribution.
- Priority to connect

As you can see, the challenges that energy consumption poses for the achievement of sustainable development, Peru, through the Executive branch (the body that issued the D.Leg.) (No. 1002) has arranged as priority action the promotion of renewable energy, which also has an impact on expanding the variety of energy sources.

The legislative framework for the promotion of investment for the generation of electricity with the use of renewable energy, aims to modify the energy matrix given the use of non-renewable energy resources, as in the Peruvian case, the most recent projects of electricity generation have used natural gas as the main source.

On the other hand, the use of renewable energy is a measure of mitigation designed to reduce the emission of greenhouse gases and in a certain aspect to prevent, mitigate or delay many of the impacts on climate change.

■ AGENTS THAT PARTICIPATE IN THE ELECTRICITY SECTOR. The following graph shows the promoting agents, regulators, and direct agents.



Source: MINEM – Perú – Electrical Sector 2010 –Promotional Document