

Peru

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Gino Sangalli
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Corporate mergers and acquisitions in Peru are regulated by two general sets of statutes: the Corporate Law (Law 26887 and its amendments), in full force and effect since January 1 1998, and the Securities Market Law (Legislative Decree 861 and its amendments), in full force and effect since October 10 1996.

Mergers

Under the Corporate Law, a corporate merger can assume two different forms: (i) two or more companies cease to exist, giving way to the incorporation of a new company; or (ii) an existing company acquires all the assets of one or more companies, which consequently cease to exist.

Mergers require the approval of a general shareholders' meeting of the companies involved, which must be attended by, and achieve the level of approving vote, the number and amount required by the pertaining bylaws. Attendance must reach at least two-thirds in the first meeting and 60% in the second. To approve the merger, an absolute majority of votes from the attendant shares to the meeting is required. If any of the companies involved is an open stock company, attendance must not be less than 50% in the first meeting, 25% in the second meeting and any percentage of shares in a third meeting.

A corporate merger is carried out pursuant to the merger project approved by the general shareholders' meeting, as well as on the project proposed by the board of directors of each participant company. This project should contain the information required by the Corporate Law – such as the valuation criteria that taken into account for the exchange relationship between the shares of each company, and the securities that will be given to the shareholders of the extinguishing companies, among others. The project and the aforementioned information are not required, however, when the total number of shares of the merging company belongs to the absorbed company.

As indicated by law, the merger agreement must be published. Those shareholders who either: (i) did not attend the general shareholders meetings; (ii) voted against the merger and recorded their decision in the corresponding minutes; and (iii)

were unjustifiably deprived of their right to vote, will be able to separate from the company as long as they request this within 10 days after the publication of the agreement. Said shares will be cancelled at the value agreed by the shareholders and the company. If no agreement is reached, the shares will be cancelled at the average quotation value from the last semester. If this value is not available, the shares will be cancelled at the value that appears in the company's books on the last day of the month before the separation.

Unless there is judicial authorization to do so, reimbursement will be made in the following two months, including any interest payments. Default of payment within the two-month period will result in a late payment interest rate.

If their credit is not duly guaranteed, creditors of the participating companies can submit their opposition to the merger no later than 30 days after the merger agreement's publication. The judge will suspend the effects of the merger agreement during the process unless the credit is cancelled or guaranteed.

Acquisitions

A company's acquisition, where the acquisition involves companies that are not quoted on the stock exchange, is not subject to any different restrictions from those that appear in the bylaws of the target company for transfers in favour of those who are not its shareholders. Those transfers will not produce any effect on the company if the procedure settled by its bylaws is not followed.

If the target company quotes its shares on the stock exchange, the Securities Market Law and regulations enacted by Supervising National Commission of Companies and Securities in Peru (the Conasev) apply. These statutes require the launch of a mandatory tender offer from those who intend to acquire, either directly, as an economic group, or in a coordinated operation with other persons, a participation in a company that is equal or greater than 25%, 50% or more, and 60% or more. These criteria apply for those transfers that occur either in a single transaction or in several consecutive transactions in a 12-month period.

A mandatory tender offer is also required when the aforementioned participation percentages are reached through indirect means (for example, the acquisition of shares of a company that is a shareholder of the target company), unless the performance

of a secondary public offering (*oferta pública de venta*) of the acquired shares is preferred. In such cases, the mandatory tender offer will be carried out for the amount of shares, and at prices to be fixed pursuant to the corresponding statute, no later than three months after the performance of the indirect operation.

The presentation of the mandatory tender offer must be communicated to the stock exchange and to the Conasev by the submission of the offering circular and other information requested by the corresponding statutes, for its respective diffusion. The offeror is required to guarantee the fulfillment of its offer, either in cash or with a guarantee from a bank, unless the correspondent consideration consists of issued securities, in which case those securities will constitute the guarantee. The offer is irrevocable, and is valid for 20 working days (which can be extended at the offeror's request for up to a further 20 working days).

Applicable statutes allow competing offers (as improvements to previous offers) to be submitted until three days before the expiration of the offer. If the initial offeror submits its new proposal in the last three days of the term, a closed auction will be held between the last competing offeror and the initial one.

The statements of acceptance of the offer by the shareholders of the target company cannot be revoked unless in the circumstances detailed in the relevant statutes. If acceptances exceed the maximum limit of the offer, the offeror can acquire all or part of the excess. The acquisition will be made *pro rata* among all the acceptors.

If acceptance does not reach the minimum amount of the offer, this will have no effect, unless the offeror agrees to acquire the total number of shares subject to acceptance.

Banking and capital markets

Recommended firms

Tier 1

Estudio Ehecopar

Muñiz Ramírez Pérez-Taiman & Luna Victoria

Rodrigo Elías & Medrano Abogados

Tier 2

Miranda & Amado Abogados

Payet Rey Cauvi

Rebaza & Alcázar Abogados

Tier 3

Estudio Aurelio García Sayan

Estudio Grau

Hernández & Rosselló Abogados

Rubio Leguía Normand & Asociados

Mergers and acquisitions

Recommended firms

Tier 1

Rodrigo Elías & Medrano Abogados

Tier 2

Estudio Ehecopar

Muñiz Ramírez Pérez-Taiman & Luna Victoria

Tier 3

Estudio Grau

Hernández & Rosselló Abogados

Miranda & Amado Abogados

Payet Rey Cauvi

Rebaza & Alcázar Abogados

Rubio Leguía Normand & Asociados

Project finance

Recommended firms

Tier 1

Estudio Ehecopar

Rodrigo Elías & Medrano Abogados

Tier 2

Estudio Aurelio García Sayan

Miranda & Amado Abogados

Muñiz Ramírez Pérez-Taiman & Luna Victoria

Payet Rey Cauvi

Rubio Leguía Normand & Asociados

Estudio Ehecopar

Estudio Ehecopar is one of Peru's leading law firms, recognized for the quality of its advice on loan restructuring, derivatives, bond and equity issuances, complex M&A deals and project financing. The Peruvian government and related agencies are regular clients of the firm, as are leading international banks (such as BBVA, ABN Amro, Merrill Lynch and Deutsche Bank), large regional telecommunications firms (including Telefónica del Peru and Telmex) and electrical operators such as General Electric Power Systems and Lincoln Electric.

The highlight of the banking transactions the firm acted on this year was the \$200 million loan by ABN Amro (which Ehecopar advised) to Bellsouth Peru. Other loan transactions for the firm included advising BBVA Continental when it loaned \$2.15 million to the municipality of Ate, and representing the same bank concerning a \$12.3 million syndicated loan to the municipality of Lima.

BBVA was also the client in two of Ehecopar's highest-profile capital markets transactions: a \$66 million note issue by a special purpose vehicle of the bank, and a secondary public offering of \$60 million of common shares in Luz del Sur. Two other notable successes saw the firm advise ABN Amro in relation to the issue of \$62 million-worth of asset-backed notes through a trust, and act for the underwriters on a \$48.2 million issuance of asset-backed securities linked to the MSCI index. Ehecopar also acted for Alicorp, the

largest food company in Peru, on preparatory matters relating to its \$62 million initial public offering.

In the M&A sphere, meanwhile, Associated British Foods chose Echeconpar as its local representative when it acquired a yeast division from Burns Philp, and was counsel for Business Travel International when it bought 60% of Travel Corp. It also represented Banco Wiese when Trafigura Beheer bought 15.8% of Volcan Compañía Minera's common stock from the company.

The biggest project financing deal the firm worked on this year was the \$500 million Cerro Verde sulphide project, on which it advised the Japan Bank for International Cooperation and the other lenders. It also advised the syndicated lenders underwriting the Etevensa power plant (for \$135 million) and the Olmos project, a trans-Andean tunnel for irrigation and power costing \$127 million.

Ismael Noya de la Piedra was recommended time and again for his professionalism, and is considered to be "particularly good in sophisticated transactions". Javier Castro Salinos is also considered "very good".

Echeconpar is a member of the Bomchil Group, an association of Latin American law firms in 17 countries. It is also affiliated with Echeconpar Abogados in Madrid and Barcelona, Spain.

Leading lawyer

Ismael Noya de la Piedra

Key contact partners

Jorge Ossio

Ismael Noya de la Piedra

Javier Castro Salinos

Estudio Aurelio García Sayan

Established in Lima in 1978, Aurelio García Sayan is, in the words of one client, a "small established firm that is very strong, reliable and convenient for general corporate law work". It specializes in securities, capital markets and international investment, and is also said to be "good in mining." Commentators had no doubts as to the proven capabilities of the firm, but there were occasional question marks raised regarding its visibility in the market. A typical comment was: "García Sayan is traditional but not very visible, despite having Luis Gastañeta, a very good lawyer who is very constructive and excellent to deal with."

Most of the firm's work is in banking and finance or energy transactions. Sample banking deals include representing Volcán Compañía Minera in relation to a \$22 million credit facility granted to it by Natexis Banques Populaires, and acting for the International Finance Corporation regarding a \$10 million loan to Inversiones Malecón de la Reserva.

The highlight of the firm's capital markets work involved it acting on the public issue of \$80 million-worth of securitization bonds by Aguaytía Energy del Perú. It also represented ABN Amro regarding the placement and issuance of corporate bonds totalling \$30 million by Banco Financiero del Perú, and provided counsel to Corporación Miski (a Peruvian stock company) in connection with a commercial paper programme.

When oil corporation Amerad Hess decided to renew its exploration activities in Peru, it employed Aurelio García Sayan to advise it on the execution of a licence contract. The firm also advised Petro-Tech Peruana in the execution of another oil and gas exploration licence in the continental shelf off the Lima and Ica shores.

Aurelio García Sayan is the only Peruvian member of international law firm network Meritas. It is also a member of the American Chamber of Commerce.

Leading lawyer

Luis Gastañeta Alayza

Miranda & Amado Abogados

A relatively new firm set up in 1999 by ex-Echeconpar lawyers, Miranda & Amado has made an immediate impact in the market, and clients spoke highly of the firm's mix of dynamism and consistent professionalism. Miranda & Amado is "young, but very good and reliable," said one interviewee, while another stated that the firm has "an enthusiastic team who are good to work with". In particular, the firm is reported to be involved in a number of Peru's most interesting M&A deals.

Examples of these deals include representing Empresa Nacional de Petróleo de Chile-Enap in relation to the acquisition of Shell's fuel interests in Peru, and acting for Camara Chilena de la Construcción regarding the sale of its interests in Royal & Sun Alliance Vida to an English insurance company. The firm also advised Tractebel when it purchased a minority stake in the company holding the concession to develop the Camisea natural gas and liquids transportation projects.

The banking and finance department's credentials are bolstered by having Citibank on its client roster. Recently Miranda & Amado advised the bank (alongside Banco Standard Chartered) regarding a \$90 million loan granted to Corporación José R Lindley for its acquisition of a major shareholding in Embatelladora Latinoamericana. It also advised Duke Energy International Egenor when it obtained a \$40 million bridge loan from Citibank, and represented Banco del Crédito del Perú when it loaned \$37 million to electricity generation company Generación Eléctrica Cahua.

From among the talented team of lawyers, Luis Marcelo De-Bernardis is recommended as excellent counsel for complex transactions in the electricity, and oil and gas, sectors, and name partner José Daniel Amado draws praise for his expertise in capital markets and for his good working relationship with Citibank. Rafael Corzo and Juan Luis Avendaño are also "highly recommendable".

Among the firm's many prestigious clients are BankBoston, Bank of America, Credit Suisse First Boston, General Electric Corporation, Pritzker and Teggas.

Leading lawyers

José Daniel Amado

Luis Marcelo De-Bernardis

Muñiz Ramírez Pérez-Taiman & Luna Victoria

Muñiz Ramírez is Peru's largest law firm, with three domestic offices and two subsidiary practices in Ecuador. The firm has evolved into one that can offer top-quality counsel across all the practice areas of civil and commercial law, and is noted as being "very thorough at carrying out due diligence" and "very good in M&A".

However, the firm's partnership recently suffered the loss of Albert Forsyth Solari, who left the practice on May 6 2005. Forsyth, who was referred to by interviewees before his departure as "an outstanding professional" and "the most prominent lawyer in Peru," was widely considered one of the top banking and finance lawyers in Peru. The effect of the loss for Muñiz Ramírez is not easy to gauge, given how recently Forsyth left. But the firm has reserves: Mauricio Olaya is known as an excellent banking lawyer, and Jorge Muñiz Ziches has considerable expertise in foreign investment as well as energy and mining projects.

Muñiz Ramírez's substantial legal team provides advice on corporate finance, international offerings of local securities, joint ventures, licence and contract options, and mining and electric power projects. One of the largest transactions the firm worked on in this latter category was the Camisea gas pipeline, an \$850 million project financed with share capital and the placement of \$270 million of local bonds. In two other notable deals, it advised the administrative agent in relation to a \$200 million grant to Southern Peru Copper Corporation, and represented Citibank when it loaned \$56 million to Minera Barrick Misquichilca for the development of the Alto Chicama mine. In straight banking work, Muñiz Ramírez advised the syndicated underwriters in relation to a \$125 million credit facility forwarded to Unión de Cervecerías Peruanas Backus & Johnston, and represented American Express Bank when it granted a \$50 million loan to Indura.

The most significant of the firm's M&A deals was the buyout of Dominion Holding Peru (Muñiz Ramírez's client) by Duke Energy International for \$400 million. The firm also acted for the controlling shareholders of the Austral Group, the second largest fishery company in Peru, when it was bought by the private fund Octagon Financial Services International. Another noteworthy transaction saw the firm advise the shareholders of Inveran (owner of one of the 10 largest pharmaceutical laboratories in Peru) when it was acquired by the Ivax Corporation.

Other clients of the firm include BBVA, Merrill Lynch, Citibank, Bank of America, Daewoo, Mitsubishi, Pfizer and Cisco Systems.

Leading lawyers

Jorge Muñiz Ziches
Mauricio Olaya
Jorge Pérez-Taiman
Luiz Pizarro

Payet Rey Cauvi

Payet Rey Cauvi celebrates its 10th year of operation in 2006, and now counts five partners and 21 associates in its team. The bulk of its work is in banking, securities, corporate and project

finance and privatization; it is also particularly well regarded for its advice on matters pertaining to the mining, telecommunications and energy industries. Interviewees refer to it as "very good" and "young but up-and-coming," and it is clear that the firm has ambitions to be a big player in the future.

The firm's prodigious activity this year attests to its growing reputation. The corporate finance department has won some notable deals under the direction of Eduardo Vega, a corporate bonds specialist. For example, the department advised on the first ever institutional bond issue by a university, providing counsel to arranging bank BBVA Banco Continental concerning the sale of \$150 million of notes. Vega was also head counsel when Payet Rey represented Southern Peru Copper Corporation in relation to a syndicated loan facility for the prepayment of bonds totalling \$200 million. Another capital markets success for Payet Rey was its role acting for a conglomerate of Peruvian breweries in relation to Peru's first-ever issue of preferred shares in exchange for investment and non-voting shares, in a deal worth \$270 million.

The firm also has a reputation for top-notch project finance counsel, thanks to its continued involvement in some of the country's largest undertakings. One such example was when Payet Rey acted for Banco de Crédito del Perú in one of the largest-ever domestic project financing operations, a \$180 million dam project to divert water from the Huacabamba river to the Lamabayeque region of northern Peru. The firm also counselled AFP Integra in connection with a capital contribution to finance a \$48 million investment in the Yuncán hydroelectric power station.

Payet Rey Cauvi is also beginning to make a name for itself in M&A – it advised the international conglomerate that bought Austral Group, one of Peru's largest fisheries, for \$140 million. Juan José Cauvi was lead counsel to the buyers (Tri-Marine Interantional, Mogster Gruppen and Octagon Financial Services), providing advice on how to secure international venture capital finance for the operation, and on the buyout of 88% of the company's publicly traded shares. The firm also acted for América Móvil when it spent \$21.2 million to acquire a concession to provide PCS services in Peruvian territory.

Payet Rey's banking clients include Banco Santander, Bank of America, BNP Paribas, Goldman Sachs and Morgan Stanley. Among the firm's corporate clients are ExxonMobil, McKinsey, International Paper, Philip Morris and Wal-Mart.

Payet Rey has a collaboration agreement with the Spanish firm Uría & Menéndez, which provides it with access to a network of affiliated offices in London, Brussels, Lisbon, New York, São Paulo, Buenos Aires, Santiago and Mexico City, as well as Spain. It also belongs to the World Law Group, a network of independent law firms that spans over 40 countries.

Leading lawyer

Eduardo Vega

Key contact partners

Juan José Cauvi
José Antonio Payet
Eduardo Vega

Rebaza & Alcázar Abogados

Rebaza & Alcázar is a new firm, founded in August 2004 by partners Alberto Rebaza and Rafael Alcázar (both formerly at Rodrigo Elías) and Juan José Cárdenas (previously legal counsel to Airport Partners). The firm has been recruiting a lot since then and now has nine associates, bringing the department size to 12.

The market is excited by the potential of this predominantly financial boutique, which is headed by two of the most distinguished capital markets and M&A lawyers in Peru. Several commentators describe it as “very aggressive,” pointing out that “despite being young, it is making inroads”. Others praise the firm’s “excellent service and pricing,” “high level of professionalism” and “capacity to resolve our questions on a timely basis”. A typical comment was: “Rebaza & Alcázar has greatly impressed us ... they are a young crowd with profound knowledge and experience, and strong contacts ... they are also pragmatic and able to deliver high-quality results on time.”

With so many plaudits, Rebaza & Alcázar debuts in the second tier for banking and capital markets in Peru. This is not just based on market comment, however, the firm has also shown its strength in this sector by acting on some high-profile deals. JP Morgan hired the firm regarding the Peruvian government’s €650 million (\$800 million) eurobond issue, and syndicated lenders Deutsche Bank and Morgan Stanley sought the firm’s counsel regarding another government issue of \$400 million-worth of global bonds. Rebaza & Alcázar also acted for the International Finance Corporation in relation to a \$30 million bond issue by Universidad San Martín de Porres.

With specialist Alberto Rebaza in the team, Rebaza & Alcázar also has a growing presence in Peru’s M&A sector. One notable deal so far saw the firm advise Pecsca regarding its buy-out of ChevronTexaco’s fuel downstream business in Peru for \$11.85 million.

Leading lawyers

Rafael Alcázar
Alberto Rebaza

Key contact partners

Rafael Alcázar
Juan José Cárdenas
Alberto Rebaza

Rodrigo Elías & Medrano Abogados

Rodrigo Elías & Medrano is one of Peru’s largest law firms, and the only one to be ranked in the top tier in each category – which reflects the strength in depth of its considerable team of 22 partners and 40 associates. Clients and peers refer to it as “the most impressive firm” in the country, and “very visible in deals.” The practice has a commendable mix of established senior lawyers who are leading specialists in their field, combined with a steady influx of young lawyers (six new associates were hired this year alone).

Former partners Alberto Rebaza and Rafael Alcázar recently left the firm to start their own financial boutique. Because

Rebaza in particular is one of the most respected finance and M&A practitioners in Peru, his shoes will be tough ones to fill. Fortunately, however, the firm boasts an excellent base of partners, among them “well-qualified” banking specialist Gino Sangalli, and leading energy and mining lawyers Luis Carlos Rodrigo Prado and Jean Paul Chabaneix.

The firm’s active capital markets department has worked on a number of transactions this year, the pick of them being the tender offer by Industrias Peñoles and Equitas Partners to acquire Milpo for \$108 million. Rodrigo Elías also counselled Barrick when it issued \$50 million-worth of bonds in the Peruvian market, and acted for the International Finance Corporation (IFC) in relation to a similar note issue of \$30 million. And it advised the IFC again regarding the \$3 million financing of Edpyme Edyficar, a non-government organization that funds the set up of small businesses to aid sustainable development.

In M&A, where the firm is probably strongest, Rodrigo Elías represented Telefónica Móviles in relation to its acquisition of Bellsouth’s Peruvian assets, as part of a general acquisition of all Bellsouth’s Latin American assets for \$5.85 billion. Another noteworthy deal involved the firm advising Votorantim Metais when it bought the Cajamarquilla Zinc Refinery for \$210 million. Chariot Resources hired Rodrigo Elías when it bought out Marcon Copper Project for \$35.4 million, as did Pan America Silver Corporation for its acquisition of Compañía Minera Argentum and Compañía Minera Natividad for \$33.8 million.

The firm’s highest-profile project financing deal, meanwhile, was the \$125 million Camisea Pipelines project, for which it advised Corporación Andina de Fomento and the Inter-American Development Bank. More recently, it has advised Consorcio Agua Azul and Ferrocarril Transandino.

Rodrigo Elías’ client roster is as distinguished as one might expect for a law firm of this stature and reputation, and contains such names as JP Morgan, Pan American Silver, Credit Suisse First Boston, the Republic of Peru, BNP Paribas and Deutsche Bank.

Rodrigo Elías is affiliated with Interlaw, an association of independent law firms in 61 countries, and is also part of the World Services Group.

Leading lawyers

Jean Paul Chabaneix
Luis Carlos Rodrigo Prado
Gino Sangalli

Key contact partners

Jean Paul Chabaneix
Julio Salas
Gino Sangalli

Hernández & Rosselló Abogados

Hernández & Rosselló Abogados is a medium-sized firm of six partners and 32 associates. It has a good reputation in capital markets: last year it advised BNP Paribas on a \$92 million issue of equity securities for Peruvian pension funds, and acted for Compass Group Safi in relation to the public placement of a \$55 million investment fund.

The firm has a number of prestigious clients, such as Procter & Gamble, BankBoston, BBVA Banco Continental and IBM. It is affiliated with the Latin America Network, ACL International and International Trademark Association.

Key contact partners

Juan Luis Hernández Gazzo
Hugo Morote Nuñez