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Legal aspects of mergers and acquisitions in Peru

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The General Companies Law fundamentally regulates Peruvian companies and their operations. But further regulations may apply, depending on the business sector in which a company operates or on the nature of the company's capital or securities activities. For example, companies that hold listed securities in a securities exchange are also regulated by the Securities Market Law.

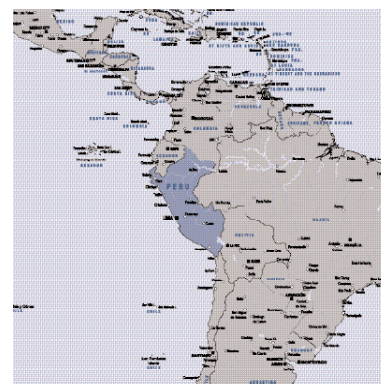
The General Companies Law contains the basic rules for a company's incorporation, its corporate structure, its activities and reorganization options and, lastly, the company's dissolution and liquidation. In that context, the General Companies Law regulates a company's capital structure, its shares or participations, including the acquisition of said shares or participations and its registration in the company's share registry (*matrícula de acciones*); the structure, functions and characteristics of the bodies of control (shareholders' meetings, board of directors, management); and the statutory or contractual rights of first refusal, quorum and voting requirements for shareholders' meetings and boards of directors.

Additionally, the General Companies Law contains the basic regulations on the financial structure of a company, including the issuance of common or preferred shares and the issuance of debt instruments.

Within the corporate reorganization possibilities, the General Companies Law regulates all of the important aspects of a merger or a split, through which a company may absorb another one by acquiring of all of its assets and liabilities; merge into a newly created company by transferring all of its assets and liabilities, and then cease to exist; or split a portion of its assets and transfer them to a newly incorporated company.

From a securities market perspective, the securities regulations set out the rules for launching a public tender offer whenever a person intends to directly or indirectly acquire for pecuniary consideration, in a single or successive acts in a period of 12 months, a significant participation in voting shares of a listed company or securities that entitles its holder to subscribe or acquire voting shares of a listed company. The same obligation is established for those persons who intend to increase their stake.

A significant participation means any direct or indirect ownership of 25% or more of the voting (common) stock of a company with at least one of its classes of shares with voting rights listed on a Peruvian stock exchange. Voting shares that are owned by: (i) persons who control, or are part of, the same economic group; or (ii) persons who are acting in concert, will be added when determining a significant participation.



A public tender offer will be mandatory when the purchaser (bidder) intends, in a single act or in successive acts, to obtain a participating interest equivalent to or higher than:

- a) 25% of the capital stock of a listed company;
- b) 50% of the capital stock of a listed company; or
- c) 60% of the capital stock of a listed company.

If the significant participation in a listed company is reached, or increased, through a company's reorganization process or through the acquisition of shares in a holding company that holds an interest, either directly or indirectly, in the capital stock of a listed company: (i) a public tender offer will have to be launched within three months of the corresponding reorganization or acquisition process; or (ii) the shares acquired will have to be sold through an unconditional public offer to sale, in which case the sale could take place in the form of a public auction through a centralized trading mechanism (basically a stock exchange).

Besides the obligation to launch a tender offer when acquiring control over a listed company, in accordance with the banking and insurance regulations, whenever a person or entity acquires more than 10% of the capital stock of a bank or an insurance company, they need to request and obtain the prior authorization of the Peruvian Superintendence of Banking and Insurance. Such authorization must also be requested and obtained by the transferor of the respective shares.

From an antitrust regulation perspective, according to Peruvian antitrust regulations, mergers or concentrations in the electrical sector must comply with a mandatory submission for authorization, to be filed before the Free Competition Commission of Indecopi. Mergers in other sectors, though they may trigger a high market concentration level, do not require notification or authorization of any antitrust authority.

Other forms of corporate acquisitions in Peru are: (i) capital increases, which are also regulated in the General Companies Act, including the regulation of preemptive rights; (ii) the purchase of assets whose main issues are dealt with contractually; and (iii) the private purchase of shares.

Finally, regarding the possible finance structure of company acquisitions, the General Companies Act forbids an acquired company to lend money to finance the acquisition of its own shares, or guarantee an acquisition. In this sense, financing for this type of activity in Peru usually comes from international or local banks (through syndications or club deals) or, to a lesser extent, through capital markets transactions.

Banking and capital markets

Recommended firms

Estudio Ehecopar

Muñiz Forsyth Ramírez Pérez-Taiman & Luna Victoria

Rodrigo Elías & Medrano Abogados

Miranda & Amado Abogados

Payet Rey Cauvi/Uría & Menéndez

Rubio Leguía Normand & Asociados

Estudio Aurelio Garcia Sayan

Estudio Grau

Mergers and acquisitions

Recommended firms

Rodrigo Elías & Medrano Abogados

Estudio Ehecopar

Muñiz Forsyth Ramírez Peréz-Taiman & Luna Victoria

Estudio Grau

Miranda & Amado Abogados

Rubio Leguía Normand & Asociados

Project finance

Recommended firms

Estudio Ehecopar

Rodrigo Elías & Medrano Abogados

Estudio Aurelio Garcia Sayan

Miranda & Amado Abogados

Muñiz Forsyth Ramírez Peréz-Taiman & Luna Victoria

Payet Rey Cauvi/Uría & Menéndez

Rubio Leguía Normand & Asociados

Estudio Ehecopar

This law firm, founded by Luis Ehecopar Garcia, has been among the leaders for corporate finance work in Peru since its foundation in 1950. And the firm is still, in the words of one competitor, “first class”. Javier Castro Salinas and Ismael Noya de la Piedra are both highly recommended as leading Peruvian lawyers for finance advice, with several other of the firm’s 12 partners also receiving praise from clients and peers alike. The partnership is supported by a team of 41 associates. The only minor criticism about Ehecopar in the research for this year’s edition of the *IFLR1000* is that the firm may be in need of an injection of younger blood among its partners.

However, this minor gripe does not seem to be affecting the firm’s visibility on many of the country’s leading deals. The firm has been involved with several large deals in recent years, including a \$300 million loan from Banco Santander to the Bavaria Brewing Company, PSEG Global’s purchase of electricity company Electroandes in connection with the company’s privatization from the Peruvian government for \$227 million, and Banco Santander’s sale of its Peruvian branch together with subsidiary Banco de Credito.

More recently, Ehecopar advised the Republic of Peru on a \$500 million bond issue, demonstrating its capital markets expertise, advised Companhia de Bebidas das Americas on its acquisition of the drink assets of Embotelladora Rivera and helped hydro-generator Electroandes with its \$30 million bond issue.

Key contact partner

Ismael Noya de la Piedra

Leading lawyers

Ismael Noya de la Piedra
Javier Castro Salinas

Muñiz Forsyth Ramírez Pérez-Taiman & Luna Victoria

The law firm of Muñiz Forsyth Ramírez Pérez-Taiman & Luna Victoria has traditionally been among the three leading law firms in Peru – itself, Estudio Ehecopar and Rodrigo Elías & Medrano. The difference in recent years is that, while the partnership at Muñiz has remained relatively stable, the number of associates at the firm has ballooned to 52 in Peru, with 12 other lawyers stationed in Ecuador.

This growth has been reflected in an increase in the volume of work done. Last year the firm’s capital markets work included advising Duke Energy on a \$100 million bond programme, acting for British American Tobacco on the public tender offer of shares in Tabacalera Nacional, advising Edegel on its \$150 million bond programme and helping Graña y Montero with its asset-backed securitization. In banking the firm worked on the sale of Banco Wiese Sudameris’ shares in Mibanco, the dissolution of Financiera Daewoo, the reorganization of Banco de Comercio and the incorporation of Banco de las Americas in Perú.

Corporate work, meanwhile, included the acquisition of 45% in asparagus exporter Camposol by Spanish investors Pagola from Siboure Holdings, the acquisition of Embotelladora Rivera’s bottling assets by Compañía Cervecería Ambev Perú, the takeover of tobacco producer Tabacalera Nacional by British American Tobacco Peru and the acquisition of lottery owner Tektron by Intralot del Perú.

The bevy of leading lawyers at Muñiz includes Albert Forsyth, Jorge Pérez-Taiman and Luiz Pizarro.

Key contact partner

Albert Forsyth

Leading lawyers

Albert Forsyth
Jorge Pérez-Taiman
Luiz Pizarro

Payet Rey Cauvi

in association with Uría & Menéndez

Payet Rey Cauvi is the Peruvian branch of a Latin American network set up by top Spanish firm Uría & Menéndez. It was founded in 1998 by a mix of domestic lawyers and lawyers from Uría who came over to help set up the office. One Uría partner is now permanently stationed in Lima, with four Peruvian partners and 18 associates.

The firm is ambitious and keen to grow, as is demonstrated by the work it has garnered for itself – though some of this is undoubtedly due to Uría’s worldwide network of clients. That work last year included advising Tèxtil San Cristobal on the refinancing of its debt, acting for Consorcio Inmobiliario Los Portales on the establishment of a trust, counselling lenders Bear Stearns and The Bank of New York on a secured credit facility and working on the liquidation of Banco Nuevo Mundo. In capital markets it worked on bond issues for REP, Mibanco and Electroandes, a specialist area for the firm, while in M&A it was involved with several takeovers and transfers of minority stakes.

Partner Eduardo Vega is an “excellent capital markets professional” and counsel José Manuel Abastos has recently been hired in an effort to strengthen the firm’s regulatory banking work.

Key contact partners

Juan José Cauvi
José Antonio Payet
Eduardo Vega

Leading lawyer

Eduardo Vega

Rodrigo Elías & Medrano Abogados

Traditionally the largest firm in Peru, Rodrigo Elías & Medrano has recently been overtaken in that position by

Muñiz Forsyth Ramirez Perez-Taiman & Luna Victoria. Rodrigo Elías still has the greatest number of partners, however, with 29 stationed in Lima. The quality of the firm is also unparalleled across the range of corporate finance advice, reflected in the fact that it is the only firm to be ranked in the top tier for every practice area.

“In regulatory banking Rodrigo Elías has an edge because of the excellent Gino Sangalli,” says on respondent. Sangalli is also highly recommended for every other area of banking and capital markets work. Alberto Rebaza is also seen as a leading lawyer, as is Rafael Alcázar. Rebaza, however, receives more recommendations than any other lawyer in Peru. He specializes in mergers and acquisitions, corporate finance, concessions, construction contracts and competition law and has been a professor of corporate law at Universidad Católica del Perú Law School since 1996.

The firm’s stand-out deals in recent years include advising on the Peruvian government’s two \$500 million bond issues, Grupo Fierro’s sale of its tobacco business, the sale of Empresas Polar’s stake in Unión de Cervecerías Peruanas Backus & Johnston to Grupo Bavaria and acting for Cía Editora El Comercio on its syndicate acquisition of a controlling stake in Channel 4 TV. The firm also acted for Consorcio Transmantaro on the first ever project financing secured over a concession mortgage, advised on the biggest ever project in Peru – the Camisea Pipelines Project – and advised AT&T Latinamerica on the development of its telecommunications network.

Key contact partner

Alberto Rebaza

Leading lawyers

Rafael Alcázar

Alberto Rebaza

Gino Sangalli

Rubio Leguía Normand & Asociados

Rubio Leguía Normand is “very good for tax advice,” being one of the leaders in Peru, but it also boasts a strong banking and capital markets practice. The firm has advised several international banks on their deals in Peru, including advising Salomon Smith Barney and JP Morgan on the Republic of Peru’s \$2 billion sovereign bond issue, acting for Banco de Credito, Bank Boston and Banco Continental on a syndicated credit agreement worth \$100 million, and working on Compania Minero Milpo’s \$60 million loan to clinch a deal with Chilean company Minera Railrock. Rubio also worked on a \$75 million loan to Pluspetrol Norte in 2003 (opposite Muñiz Forsyth Ramirez Perez-Taiman & Luna Victoria), acted for Banco de Crédito on a \$60 million bond issue for Cemento Pacasmayo and advised BBVA Banco Continental on a \$50 million securitization of credit-linked notes.

Unfortunately, the experienced the loss of leading partner Enrique Norman, who died in 2003. He was one of the

most experienced lawyers in Peru, and was without a doubt the foundation for the firm’s blue-chip status.

Rubio, which was founded in 1980, comprises 10 partners and 36 associates, of which Alfonso Rubio is picked out by his peers as the leading lawyer. He specializes in corporate law, mergers and acquisitions and tax work.

Key contact partners

Guillermo Acuña Roeder

Emil Ruppert Yáñez

Leading lawyer

Alfonso Rubio

Other notable firms

Miranda & Amado Abogados, an offshoot of Estudio Echeopar, has “been seen on a number of important deals” in banking and capital markets and has therefore been promoted to the second tier in this year’s edition of the *IFLR1000*. The firm is also “good in energy-related deals, very up and coming” and is recommended as “very aggressive, young and very professional”.

Estudio Aurelio Garcia Sayan is a “highly traditional” firm, known particularly for its energy work and lending activities, while **Estudio Grau** is a new entry to this year’s rankings, an “old-fashioned firm but with a good foreign clientele” and “with a good presence in project financing, particularly in energy”. Grau’s corporate finance practice has also been boosted with the arrival of several lawyers from Valle y Grimaldo/Ernst & Young, which dissolved last year when Ernst & Young decided to pull out of the country. Chief among those additions were Hector Grimaldo and Maria del Pilar Sabogal, both talented younger lawyers that “have given new impetus to the corporate and commercial practice”.