

---

## REGULATORY OVERVIEW

---

### LAWS AND REGULATIONS RELATED TO THE MINING INDUSTRY

#### General regulatory framework in Peru

The Uniform Text of the General Mining Law, approved by Supreme Decree N° 014-92-EM dated 4 June, 1992 (the “**Mining Law**”), and its amending and complementary provisions, comprise the primary and general legislation governing all mining activities in Peru. Several sections, matters and aspects provided under the Mining Law have specific and individual regulations.

The regulations provide specific rules applicable to many of the general provisions of the Mining Law, such as, mining activities and the ways in which they can be conducted, mining concessions, rights and obligations for holders of mining activity, early works construction, development, and exploitation activities, land-use rights over the surface land where the mining activity is to be conducted, rules for validity fees and penalties (for not complying with minimum investment requirements, mining agreements (mining lease, option and transfer agreements, among others), processing and transport concessions, rules applicable to small-scale miners, administrative jurisdiction over mining matters, as well as provisions on health and safety.

There are also several guidelines and protocols issued by the MEM on different matters related to mining operations reflecting acceptable national standards in mining activity on sustainable development (i.e. protocols for monitoring air and water quality and emissions, specific environmental guidelines on mine water management, mine tailings and residue management, cyanide management, guides on community relations, guidelines for preparing mine closure plans, technical guidelines on heap leaching, among others).

Depending on the type of project, the following laws and regulations can also apply to the mining industry:

- The Health and Safety at Work Act, Law No. 29783 and its regulations.
- The regulations on safety and occupational health and other complementary measures applicable to the mining activities.
- The regulations on environmental protection for mining-metallurgical activities.
- The Environmental Regulations for Mining Exploration Activities.
- The Regulations of title nine of the Mining Law related to the guarantees and measures for promoting investment in the mining activity.
- The Regulations on the OSINERGMIN’s supervision of mining and energy activities.

---

## REGULATORY OVERVIEW

---

- The Law regulating mining concessions in urban and urban expansion areas (Law N° 27015) and its regulations.
- The Mining Royalty Law (Law N° 28258) and its regulations.
- The Mine Closure Law (Law N° 28090) and its regulations.
- The regulations on citizen participation proceedings applicable to the mining sector.
- The Special Mining Tax Law (Law N° 29789) and its regulations.
- The Special Mining Contribution Law (Law N° 29790) and its regulations.

### The Concession System

Peruvian mineral resources are the property of the Peruvian State and the private sector may only exploit such resources in accordance with the Peruvian concession system. Under Peruvian law, investors are only allowed to carry out mining activities in Peru after obtaining the necessary concessions.

Under the Mining Law, prospecting and trading activities are free within the national territory and do not require a concession from the Government whereas exploration, exploitation, mineral processing operations, ancillary services to mining concessions (ventilation, draining, among others) and mining transportation, are activities that necessarily have to be conducted through a system of concessions. In general terms, a concession provides its titleholder with the exclusive right to undertake a specific mining activity within a determined area.

Mining concessions are granted for indefinite periods, subject only to termination (as explained later in this section). They are irrevocable as long as their holders pay the annual validity fee and reach minimum production levels within the terms set forth by law or otherwise pay penalties, as explained below and comply with the provisions and rules governing the administrative proceeding for obtaining title to mining concessions. Further, a concession can be cancelled in the case of overlapping with priority mining rights or when the right cannot be located.

### Types of Concession

The Mining Law provides four types of concessions:

- Mining concession: grants the right to explore and exploit mineral resources (either metallic or non-metallic).
- Processing concession (or “**beneficiation concession**”): grants the right to process the extracted minerals and concentrate their valuable parts and/or to purify, smelt or refine metals by using physical, chemical and/or physicochemical processes. This is the concession required for operating processing plants.

---

## REGULATORY OVERVIEW

---

- General works concession (or “**service concession**”): grants the right to provide auxiliary/ancillary services to two or more mining concessions.
- Mining transportation concession: grants the right to set up and operate a minerals massive transportation system by non-conventional methods, such as pipelines and conveyor belts.

Mining concessions are granted by the Geological, Mining and Metallurgical Institute (“**INGEMMET**” for its acronym in Spanish), while the other three types of concessions listed above (processing, general works and mining transportation concessions) are granted by the General Mining Office of the MEM (“**DGM**” for its acronym in Spanish). Any acts and/or agreements related to these concessions must be registered with the Mining Rights Registry, which is part of the National Public Registry System, to be effective against both the Peruvian government and third parties.

Mining concessions are granted with respect to areas consisting of a minimum of 100 Ha and a maximum of 1,000 Ha. Holders of mining concessions are able to obtain more than one mining concession, as well as to obtain different types of concessions over the same area.

A mining concession allows its holder to conduct exploration and exploitation activities within the area established in the relevant concession title, provided that mining activities may be conducted as long as the holder previously obtains all other applicable administrative authorizations, licenses and permits required for doing so, including:

- (i) Environmental certifications/instruments and all other applicable environmental permits,
- (ii) Water rights,
- (iii) Land-use rights,
- (iv) Use of explosives,
- (v) Authorization for starting and/or restarting exploration, construction and exploitation activities (including the approval of the mine plan and waste dumps),
- (vi) Solid waste management and disposal,
- (vii) Cultural heritage (e.g., obtaining from the Ministry of Culture a certification proving that there are no archeological remains on the surface of the area of interest — “**CIRA**” for its acronym in Spanish),
- (viii) Air and soil protection, and
- (ix) Closure and post-closure activities.

---

## REGULATORY OVERVIEW

---

In Peru, a mining concession is a different and separate property from the surface land where it is located. Consequently, holding a mining concession does not grant the titleholder any right to the surface land above the mining concession. Therefore, for purposes of conducting mining activities, the holder of a mining concession must also obtain or acquire from the corresponding landowners the relevant land-use rights or title to the surface land.

### **Requirements and Obligations for Mining Concessions' Holders**

#### **Requirements**

Mining concessions may only be granted to individuals domiciled in Peru, companies incorporated in Peru whose principal business is to carry out mining activities (although such companies may be wholly owned by foreign investors, with the exception set out in the following section), or branches of foreign companies that are established in Peru for purposes of carrying out mining activities. The latter two categories are required by law to be registered in the Peruvian Public Registry.

An applicant for a mining concession is required to file a request with INGEMMET, pay the requisite fee and the mining annual validity fee (as detailed in the paragraph below headed "Obligations for holders of mining concessions") for the first year (that is, for the year in which the concession is requested), set out the Universal Transversal Mercator ("UTM") coordinates of the concession, taking into consideration any preexisting rights, publish notices provided by INGEMMET (within 30 business days upon such notification) in the official newspaper (El Peruano) and in a newspaper of the capital of the province in which the area of the requested concession is located.

Once favorable legal and technical reports (to be prepared within 30 business days of delivery of all documentation) have been issued, the INGEMMET grants the mining concession.

Finally, the applicant must file the resolution that grants the mining concession for its registration with the Public Registry.

#### **Obligations for holders of mining concessions**

Holders of mining concessions must comply with certain obligations provided by Peruvian law. There are 2 main obligations under the Mining Law that shall be fulfilled by all mining concessions' holders for purposes of keeping mining concession titles valid and in good standing, as detailed below: (i) payment of validity fees (*derechos de vigencia*); and, (ii) meeting minimum production levels. Failure to comply with such obligations may cause the cancellation and/or forfeiture of the corresponding mining concession.

- ***Payment of validity fees (good standing fee):***
  - (a) The validity fee (*derecho de vigencia*) consists in a payment of US\$ 3.00 per hectare, per year; which is due and payable on, or prior to, June 30th of each year.

---

## REGULATORY OVERVIEW

---

- (b) Non-compliance with this obligation for 2 consecutive years results in the forfeiture and/or cancellation of the respective mining concession.
- (c) In the case of processing concessions, article 46 of the Mining Law provides that, as from the year in which the processing (beneficiation) concession is requested, its holder is obliged to pay an annual validity fee (good standing fee) in the amount based on the installed capacity, as follows:
- Up to 350 t/day<sup>1</sup>, 0.0014 of 1 UIT for each t/day.
  - More than 350 and up to 1,000 t/day, 1 UIT for each t/day.
  - More than 1,000 and up to 5,000 t/day, 1.5 UIT for each t/day.
  - For each 5,000 t/day in excess, 2.00 UIT for each t/day.
- (d) In the case of mining transportation concessions, article 47 of the Mining Law provides that, when requesting a service concession or transportation concession, the petitioner will pay a validity fee of 0.003% of 1 UIT applicable per lineal meter of planned work.
- ***Minimum annual production levels:***

There are 2 different regimes applicable to this obligation depending on the date in which the concession is granted:

- (a) For mining concessions granted up to 10 October 2008:

Holders of mining concessions granted up to 10 October 2008 are obliged to achieve a minimum production of US\$ 100.00 per hectare, per year (in the case of metallic concessions), within 6 years following the year in which the respective mining concession title was granted. If this minimum production is not reached, as of the first semester of the 7th year, the holder of the concession shall pay a US\$ 6.00 penalty per hectare, per year, until such minimum production is reached (note that production penalties increase to US\$ 20.00 as from the 12th year).

It is possible, however, to obtain an exemption on the penalty's payment if there is evidence that an amount equivalent to at least 10 times the applicable penalty has been invested in the mining concession.

Non-compliance with this obligation for 2 consecutive years results in the forfeiture and/or cancellation of the respective mining concession.

---

<sup>1</sup> t/day (metric tonnes per day) refers to the installed processing capacity.

---

## REGULATORY OVERVIEW

---

(b) For mining concessions granted as from 11 October 2008:

Mining concessions granted after 10 October 2008, are subject to the new minimum production regime provided by Legislative Decrees No. 1010 and 1054 and their regulations approved by Supreme Decree No. 054-2008-EM. Under this regime, mining concession holders should achieve a minimum production equivalent to at least 1 UIT per hectare, per year (in the case of metallic mining concessions), within a 10-year term from the year in which the relevant mining concession title was granted. If such minimum production is not reached within the referred term, the concession holders shall pay penalties equivalent to 10% of the payment, per year. Regardless of the investments that are made in the concession, there are no exemption events from paying these penalties.

The mining concession shall be cancelled if minimum production is not achieved and the applicable penalties are not paid for 2 consecutive years. Moreover, if the minimum production is not achieved within a 15-year term upon the year in which the concession title was granted, the mining concession shall be cancelled by the mining authority. However, holders of mining concessions may be exempted from the cancellation event upon the expiration of the 15-year term (and up to a maximum non-extendable 5-year term) if non-compliance with the minimum production is caused by a qualified force majeure event or by facts not attributable to holders of mining activity. In both cases, these events shall be duly proved to, and approved by, the mining authority. Likewise, holders may be exempted from the cancellation within such term by paying the applicable penalty and, besides, by proving investments on the concession equivalent to at least 10 times the amount of the applicable penalty. If minimum production is not achieved within a 20-year term upon the year in which the concession title was granted, the concession shall inevitably be cancelled.

- ***Consolidated Annual Statement (Declaración Anual Consolidada — “DAC” for its acronym in Spanish):***

Any person undertaking mining activity is required to file a DAC with the MEM every year, containing information on the activities conducted during the previous year including information on the holder of mining activity and its mining concessions, production and/or minimum investments, sustainable development activities conducted on the relevant areas and other information requested by the MEM. This information is used for preparing statistics on the mining activities in Peru.

- ***Mining statistics report:***

Holders of mining activity are required to file a mining statistics report (“ESTAMIN”) on advances in production and safety within the 10 calendar days of the end of every month. This information is used by the MEM for preparing mining statistics surveys.

Obligations regarding DAC and ESTAMIN do not affect title to the mining concessions itself, but they may affect the holder of mining activity, since non-compliance with such obligations may give rise to an administrative sanction.

---

## REGULATORY OVERVIEW

---

### *Limitations on foreign investors*

There are no restrictions or special requirements applicable to foreign individuals or companies to hold mining concessions in Peru (however, they should incorporate a local company to be the formal holder of the concession), except for those cases in which the mining concessions are located within 50 km of Peru’s borders. In the latter case, as provided under article 71 of the Peruvian Constitution, there should be an express authorization from the government for acquiring the mining concession through the issuance of a Supreme Decree in this regard.

### *Limitations on obtaining mining concessions in Natural Protected Areas*

Under the law, certain continental and/or marine spaces are declared to be Natural Protected Areas (“**NPA**s”) given their importance for conserving biological diversity, ecosystems and other associated cultural, scientific and landscape related values. These NPAs are required to be maintained in perpetuity in their natural condition. NPAs can be used by individuals or companies under certain rules and conditions expressly provided by the competent authority. The latter can also approve the use of resources located within a NPA under certain conditions or provide some restrictions to their direct use. The competent authority in this matter is the *Servicio Nacional de Áreas Naturales Protegidas por el Estado* or “**SERNANP**” (formerly, the *Instituto Nacional de Recursos Naturales — “INRENA”*).

Except for Private Conservation Areas, NPAs are established on a permanent basis. The physical reduction or legal modification of the areas comprising the NPAs National System or “**SINANPE**” may only be approved by Law. NPAs may be of: (i) national administration, which are part of the SINANPE, (ii) regional administration, which are called Regional Conservation Areas; and, (iii) private conservation. Categories for areas comprising the SINANPE are: National Parks, National Sanctuaries, Historical Sanctuaries, Wildlife Refuges, National Reserves, Communal Reserves, Hunting Areas, among others.

NPAs can be classified in areas of indirect use and areas of direct use:

Areas of Indirect Use	Areas of Direct Use
<ul style="list-style-type: none"> <li>• National parks, national sanctuaries and historical sanctuaries.</li> <li>• Scientific research, recreation and tourism are allowed in these areas.</li> <li>• The extraction of natural resources (i.e. mining activities) is not allowed in these areas nor modifications or transformations of the natural environment.</li> </ul>	<ul style="list-style-type: none"> <li>• National reserves, landscape reserves, wildlife refuges, communal reserves, protection forests, hunting areas and regional conservation areas.</li> <li>• Extractive activities and use of resources are allowed in areas of direct use (primarily by local populations) in those areas and places and for those resources that are defined in the Management Plan of the specific area. Other uses and activities that are developed within the area shall be in line with the objectives of the relevant area.</li> </ul>

---

## REGULATORY OVERVIEW

---

The development of mining activities in a natural protected area of indirect use is strictly prohibited, unless mining rights have been granted before the creation of such area. Likewise, activities conducted within the boundaries of a natural protected area of indirect use shall match the objectives for which the natural protected area was established.

Each NPA will have a Master Plan, which is the highest level planning document with respect to the relevant NPA. It defines the zoning, strategies and general policies for managing the area, as well as the organization, objectives, specific plans required and driving programs along with the cooperation, coordination and participation aspects related to the area and its buffer zones.

In order to conduct any activity within the boundaries of a natural protected area or its buffer zone, a favorable previous technical opinion has to be granted by SERNANP. In addition, prior to obtaining any mining concession in an area that overlaps with a NPA, SERNANP has also to issue an opinion declaring that, on a conceptual basis, mining activities are compatible with the objectives of the NPA. Consequently, the sole overlapping of a natural protected area with a mining concession does not necessarily impede the execution of mining activities in such area.

### *Limitations on the development of mining concessions in archaeological sites*

Mining projects cannot be developed in areas where archaeological sites are located. In general terms, if the design and development of mining projects involve the removal of topsoil, mining companies need to obtain from the Ministry of Culture a CIRA with respect to the relevant surface area within 20 business days upon the filing of the application. The CIRA is an official document issued by the Ministry of Culture, by means of which such authority provides the inexistence of archaeological remains or goods that qualify as national cultural heritage in specific surface areas. The CIRA is valid for an unlimited period, but will become void should any archaeological artifacts are accidentally discovered during the construction works or due to any natural cause. In those cases, the company must stop the construction work immediately and notify the Ministry of Culture. Failure to stop the construction work will generate applicable administrative, civil and criminal liabilities. Under certain exceptional circumstances, Peruvian legislation allows the removal of archaeological sites or features when the area is required for the development of projects that are of national interest.

Regarding the CIRA, there is no express legal obligation for holders of mining activity to obtain a CIRA for conducting mining activities. However, the applicable legal regulations establish the obligation of every person who performs any economic activity to confirm that its activities have caused no damage to any item that qualifies as national cultural heritage or any archaeological remain. Thus, a mining titleholder is not legally obliged to obtain a CIRA in order to begin construction works, but is duly obliged to verify, at any moment, that its works have caused no damage to goods that qualify as national cultural heritage or archaeological remains.



---

## REGULATORY OVERVIEW

---

Recent amendments to the law optimize the administrative proceeding for obtaining the CIRA. These amendments provide exceptions for obtaining the CIRA in the cases of projects that are executed over preexisting infrastructure (instead of obtaining a CIRA, holders of these projects shall submit with the competent authority an Archaeological Monitoring Plan for its approval within 10 business days upon submission). Moreover, in the case of areas having a preexisting CIRA (that is, areas having a CIRA previously issued), it is not necessary to obtain a new CIRA, but to submit an Archaeological Monitoring Plan.

### Mining Royalties Law

Holders of mining concessions are obligated to pay to the Peruvian government an annual royalty based on a percentage over the “mineral concentrated value”, determined in accordance with its international quotation, as follows:

- 1% of the mineral concentrated value up to US\$60 million;
- 2% of the mineral concentrated value exceeding US\$60 million and up to US\$120 million; and
- 3% of the mineral concentrated value exceeding US\$120 million.

Amendments to the law in 2011 changed several provisions of the Mining Royalties Law, foreseeing, among other aspects, that mining royalties will now be calculated on a company’s quarterly operating profit applying an effective rate that ranges between 1% and 12%. The effective rate (between 1% and 7.14%) is determined in accordance with the operating profit margin<sup>2</sup>. Pursuant to the new provisions mining royalties will be calculated and paid on a quarterly basis.

If a holder of mining concessions has signed a stability agreement (as explained further below) before the amendments took effect, the regime in effect before those amendments will apply for the term of the stability agreement, regardless of whether such regime was modified thereafter.

The Project Company entered into a MSA with the Peruvian government prior to the new laws coming into effect. Therefore, it will be obliged to pay the mining royalty in accordance to original rules (calculated on the sale of concentrates). However, the stability regime is not applicable yet as the requirements established for this purpose by the Mining Law have not been met at this point. Until the terms of the MSA are met, the Project Company has to comply with the new rules (paying royalties on the operating profit, if any).

---

<sup>2</sup> Operating profit margin is determined by dividing quarterly operating profit between quarterly sales.

---

## REGULATORY OVERVIEW

---

As part of the 2011 modification of the mining royalties regime, the Special Mining Contribution was created under which concession holders that exploit metallic minerals are obligated to pay a special contribution only with respect to projects that are subject to a stability agreement in force, and provided that they enter into an agreement with the Peruvian government in which they agree to voluntarily pay the special contribution. The Special Mining Contribution will be paid applying an effective rate between 4% and 13.12% of a company's quarterly operating profits. The effective rate is determined in accordance with the operating profit margin.

As mentioned above, since the Peruvian government is obligated to comply with the provisions of stability agreements entered into with concession holders, concession holders would only be obligated to pay the Special Mining Contribution if they voluntarily enter into an agreement with the Peruvian State in which they agree to pay the contribution. The Project Company has entered this agreement with the government.

The effective amount paid for mining royalties established by the Mining Royalties Law will be considered as a credit to apply against the Special Mining Contribution. If the amount of royalties paid is higher than the special mining contribution, the difference will be carried forward to the next quarterly period.

### *Use of superficial land*

Pursuant to article 9 of the Mining Law, a mining concession is a property right different and independent from the ownership of the surface land on which it is located. The principle is that title to a mining concession does not ensure permission to use the surface land on which the mining concession is located. Therefore, for purposes of conducting mining activities on the mining concessions' surface areas, holders of mining activity need to obtain the relevant land-use rights from the corresponding landowners. There are different options for acquiring land-use rights and decision depends on many factors, including information on the legal identification of the owner (private individuals, companies, the Government, peasant communities, among others), legal status of the relevant land and official records of who owns the land (land title), the project's phase, scope, profitability (e.g., if there is a bankable feasibility study on the project), mine expansion project, technical information and capacity, community relations and social issues, among others. In addition to other options provided by law, please note the following:

- Depending on a case-by-case assessment and the factors mentioned above (among others), to the extent there is legal certainty on who owns the relevant land, as well as information on their legal status (including land title), usually, the best option is to acquire title to the surface land required for implementing the project's infrastructure and components (including ancillary components). This option is usually assessed by investors once the project turns into an operation (that is, before beginning the construction phase) and, in some specific cases, even before implementing exploration programs.
- Another option is to execute land-use agreements for obtaining temporary land-use rights over the relevant surface areas (lease, surface rights, easement, among others).

---

## REGULATORY OVERVIEW

---

- When the above options (for any reason) cannot be executed, there is the possibility of obtaining a legal easement from the Ministry of Energy and Mines (which is rarely granted) under the applicable administrative proceeding.
- In the case of state-owned surface lands, there are special proceedings and mechanisms under the applicable Peruvian laws for obtaining ownership (through direct sale or public auction) or formal and temporary land-use rights (surface rights, usufruct, lease, among others) over those state-owned surface lands.

### *Peasant communities' lands*

According to the Peasant Communities Act (Law No. 24656) and its regulations and unless otherwise provided in the Peasant Community's by-law, the lands owned by Peasant Communities may be exceptionally transferred to third parties provided that there is a prior agreement in this regard of at least 2/3 of all the qualified Community's members. The relevant resolution has to be approved by means of the General Assembly, which has to be expressly and solely summoned for this purpose. Extensively, transfer or act of disposal of these Community's lands may include purchase, lease, and easement, among others.

In general terms, regardless of those resolutions related to the Community's lands, the legal framework on Peasant Communities provides that the General Assembly's resolutions will be approved by a simple majority of votes (50% plus one vote), except those cases expressly provided in the Law and the Community's by-law.

### *Prior Consultation Proceeding*

In 1993, Peru ratified the ILO Convention No. 169 on Indigenous and Tribal People in Independent Countries. This Convention provides Indigenous and Tribal People with a right of consultation and regulates the People's prior consultation right with regards to "administrative measures" (e.g. administrative resolutions authorizing a particular activity or development project) or "legislative measures" that may directly affect their collective rights, on their physical existence, cultural identity, quality of live or development. The Law on the People's prior consultation right defines, among other aspects, the content, principles and general terms, steps and requirements applicable to the prior consultation procedure (*procedimiento de consulta previa*), as well as the objective criteria (cultural aspects, lifestyle, direct descendant from native population of the national territory, own customs) and subjective criteria (the group's collective sense of having indigenous or native identity) in order to identify and determine the People as holders of the prior consultation right.

In this sense, this legal framework regulates the prior consultation procedure that has to be conducted by the government before issuing the "administrative or legislative measures" which are subject to consultation provided that such measures directly affect the People's collective rights. Thus, the obligation of conducting the prior consultation proceeding falls on the Government, through the public and/or administrative entities in charge of promoting, adopting, approving and/or issuing such measures. Under this context, in order to initiate the prior consultation procedure, the government has to identify: (i) the "administrative or legislative measures" which will be subject to consultation; and, (ii) that such measures directly affect the People's collective rights by identifying the latter.

---

## REGULATORY OVERVIEW

---

It should be noted that Indigenous and Tribal Peoples do not have the right of veto over the Government's decisions or policies or the right to stop a mining project. Upon completion of this prior consultation procedure, the Peruvian government can discretionarily approve or reject the applicable legislative or administrative measures.

In the case of the proceeding for obtaining title to mining concessions (administrative measure), note that the competent authority (INGEMMET) has resolved and established in several resolutions that, under the context of the prior consultation procedure, the fact of obtaining a mining concession does not affect neither the People's collective rights nor those of the national population due to the following arguments: (i) title to a mining concession does not grant or entail its holder any property or possession rights over the surface land, since a mining concession is a different and separate property from the surface land where it is located, (ii) a mining concession is only granting exclusive "rights" to a private party over mineral resources, (iii) a mining concession does not grant land-use rights over surface lands for conducting mining activities, (iv) a mining concession does not authorize the search for, or the extraction of, mineral resources on surface lands; and (v) a mining concession does not contain itself information on mining projects or approve exploration or exploitation projects. Due to these reasons, the administrative measure for obtaining a mining concession has no direct relation with the People's collective rights nor creates any type of direct affectation to the People's collective rights, so that, according to INGEMMET, the prior consultation procedure would not be applicable for this specific administrative measure.

Based on the obligation provided in Law No. 29785, on 25 October 2013, the Ministry of Culture has published the first official list of 52 indigenous peoples/groups within the national territory, including information such as names, geographic location, among others. According to the information provided by such Ministry, this list will be updated every 15 days. However, there is not yet information on the exact and/or specific areas where those indigenous groups are located. Note that this list can be only taken as a reference and, therefore, competent authorities may conduct a prior consultation procedure on a case-by-case basis (that is, even with respect to indigenous groups that have not been expressly identified in such official list), as long as they determine that the administrative or legal measure to be issued could directly affect the collective rights of a particular indigenous group.

### **Regulatory matters regarding environmental matters**

#### **General Aspects**

As a general rule, Peruvian law provides that holders of mining activities are obliged to preserve the environment in a sustainable way in the time that such activities are conducted. In this sense, holders of mining activities are responsible for the control of its emissions, effluent discharges and disposal of all by-products resulting from their operations, and for the control of substances that may impose any hazard, either due to excessive concentrations or prolonged exposure. They must ensure that those elements and/or substances that may harm the environment do not exceed the maximum levels allowed by the corresponding regulations. In case any damage is caused while conducting mining activities, the respective holders will be liable.

---

## REGULATORY OVERVIEW

---

According to the applicable mining and environmental regulations, the competent authority in environmental matters arising from mining activities is the MEM through the DGAAM. On the other hand, the faculties for supervising and controlling environmental obligations are exercised by the Environmental Evaluation and Control Agency (OEFA — for its acronym in Spanish) an entity dependent from the Ministry of Environment.

The environmental aspects of mining activities are mainly governed by the General Environmental Law, the General Mining Law, their regulations and other miscellaneous mining environmental laws and regulations, as well as regulations governing corporate social responsibility. The maximum fine for a breach of the environmental laws is 30,000 Tax Units.

### **National Environmental Impact Assessment System**

The Law on the National Environmental Impact Assessment System and its regulations, set out that all human activity involved in constructions, works, services and other activities that may eventually cause environmental damages are subject to the National Environmental Impact Assessment System. Accordingly, these activities must be carried out under an adequate environmental certification, which should describe the most relevant environmental aspects of the activity, the expected environmental impacts that might arise from such activity and the implementation of the necessary measures to avoid or reduce the possible damages to acceptable standards.

Each stage of development of mining activities (*i.e.* exploration, exploitation) requires the prior approval of a specific environmental management instrument.

In the case of mining exploration activities, the Environmental Regulations on Mining Exploration Activities states that the execution of exploration activities is subject to obtaining the corresponding environmental certification. Under such regulations, the latter are classified in two categories:

- **“Category I” projects:** Mining exploration activities that comprise any of the following: (i) a maximum of 20 drilling platforms; (ii) a disturbed area of less than 10 Ha considering drilling platforms, trenches, auxiliary facilities and access means; and, (iii) the construction of tunnels with a total maximum length of 50m. Holders of these projects must submit an Environmental Impact Statement (DIA) before the MEM, which in principle, is subject to automatic approval upon its filing, and subject to subsequent (*ex post*) review by the latter.

However, in any of the following cases, the project shall not be subject to automatic approval and shall necessarily obtain an express prior approval by the MEM, which should be granted, in principle, within a term of two months since filing the DIA: (i) the project is located in a protected natural area or its buffer zone; (ii) the project is oriented to determining the existence of radioactive minerals; (iii) the platforms, drill holes, trenches, tunnels or other components would be located within certain specially environmental sensitive areas specified in the applicable regulations (e.g., glaciers, springs, water wells, groundwater wells, protection lands, primary woods, etc.); (iv) the project covers areas where mining environmental contingencies or non-environmental rehabilitated previous mining works already exist.

---

## REGULATORY OVERVIEW

---

- “Category II” projects: Mining exploration activities that comprise any of the following: (i) more than 20 drilling platforms; (ii) a disturbed area of more than 10 Ha considering drilling plants, trenches, auxiliary facilities and access means; and (iii) the construction of tunnels over a total length of 50 m. These projects are subject to the approval of a Semi-Detailed Environmental Impact Study (EIA-SD) by the DGAAM.

Holders of mining concessions that have completed the exploration stage, or envisage mining development and exploitation activities (including the processing of minerals), are required to prepare and obtain the approval of a detailed Environmental Impact Study (EIA) before the DGAAM, which involves a process of public hearings in the locations where the project will be developed. This obligation is also applicable to those projects that seek to expand their ongoing operations by 50% or more which result in the modification of its EIA.

Additional environmental obligations are imposed on concession holders that carry out exploitation activities including monitoring, reporting and appointing a suitably qualified person within their operations to monitor their environmental standards.

During the preparation of the EIA subject to evaluation, EIA-SD or EIA, holders of mining concessions must analyze the social and economic concerns and issues of the population that lives or works in the areas surrounding the mining project. This public participation procedure is separate from the procedure regulated by the Law of the Prior Consultation Right of the Indigenous Population.

Recent changes to the law have been made to speed up and simplify some rules and proceedings relating to approved projects. Project owners may modify auxiliary and ancillary components or execute extensions over projects having an approved environmental certification without conducting an environmental instrument’s modification proceeding, as long as those minor modifications have non-significant environmental impact or the changes are to implement technological improvements on the operations. In such events, before implementing such modifications, holders of mining projects shall prepare a technical report proving such conditions and aspects before the competent authority with approval of the technical report within 15 business days of submission.

In case the proposed activity involves a considerable modification on the project (including aspects such as magnitude or duration of the project’s environmental impacts or the approved mitigation or recovery measures), those modifications shall be assessed under the regular modification proceeding.

### **Mine Closure Plan**

Mining titleholders are required to file a Mine Closure Plan (MCP) before the DGAAM for its approval.

---

## REGULATORY OVERVIEW

---

The MCP includes environmental rehabilitation and remediation measures that the holder of mining concessions must carry out during the operation of the mine and until its closure, in order to remediate the area used or disrupted as consequence of the execution of mining activities. The MCP contains the following information: (i) a description of the steps and measures that will be taken to restore/remediate the areas and facilities of each mining unit; (ii) the costs associated with the execution of the closure, final closure and post-closure measures; (iii) the timing for implementing such measures; (iv) the control and verification methods; and (v) information regarding the environmental guarantee that shall be granted in favor of the MEM for securing completion and execution of the MCP. Such guarantees may be banking guarantee or credit insurance, cash guarantees, trusts, among others.

On a feasibility level, the MCP must be submitted within one (1) year as from the date of approval of the EIA. Content of the MCP on a feasibility level shall be consistent with the typical characteristics of the mining unit, with the application of practices, methods and approved technologies, and take into account relevant factors including, but not limited to, the geographic location of the mining unit, the closeness to human settlements, and the features of the area of influence. The approved EIA shall also include closure measures, but only on a conceptual level.

According to the Mine Closure Law, the holders of mining concessions in operation are obligated to:

- implement a MCP since the commencement of its mining activities;
- report to the MEM, on a six month basis, the progress of the rehabilitation works included in the MCP; and
- grant an environmental guarantee, in favor of the MEM, covering the estimated costs associated with its MCP.

The Environmental Guarantee is granted by means of annual contributions. The amount of each annual contribution is the result of dividing the total amount of the Environmental Guarantee by the number of expected remaining years in lifespan of the mine. Regarding that matter, the Environmental Guarantee shall be granted as from the year immediately following the approval or amendment of the MCP, within the first twelve (12) working days of each year. The holder of mining concessions shall not be able to develop exploitation and/or beneficiation mining activities before the granting of the Environmental Guarantee.

### **Mining Environmental Liabilities**

Any person who causes environmental damage or degradation is responsible to adopt the corresponding measures to repair, compensate or rehabilitate such damages, without prejudice of the civil and/or criminal responsibilities that might arise thereof.

---

## REGULATORY OVERVIEW

---

Mining environmental liabilities are defined by law as: “*facilities, effluents, emissions, dust or deposits of waste generated by mining operations, now abandoned or inactive, that may constitute a potential and permanent risk to the health or to the property of the population or to the ecosystem*”.

The general rule is that the producer of mining liabilities is obliged to: (i) remediate mining environmental liabilities and (ii) submit an environmental liabilities closure plan before the MEM. An exception to this latter obligation may apply if the activities for the remediation of mining environmental liabilities were previously covered by another closure plan in process of being approved or if such closure plan has been approved as a result of inspection activities, private initiatives or an agreement with the local people.

Mining titleholders which generated mining environmental liabilities or those who voluntarily choose to remediate mining environmental liabilities need to comply with the preparation of any of the following alternatives:

- Environmental Liabilities Closure Plan.
- Re-exploitation of environmental liabilities.
- Reuse of environmental liabilities.
- Inclusion of liabilities in the Mining Closure Plan.

and should execute a voluntary remediation agreement with the MEM in the special format previously approved by a ministerial resolution.

### **Water Resources and Wastewaters**

Water resources are an inalienable and non-prescriptive property of the Peruvian state. However, water use rights may be granted to third parties — based on an efficiency criterion — as licenses, permits and/or authorizations for the development of specific activities (*i.e.* mining):

- Water Use Permits: granted exclusively over excess water resources, subject to the eventual availability of waters.
- Water Use Authorizations: granted to conduct studies or perform temporary and special works.
- Water Use Licenses: are granted for the permanent use of water for a determined purpose.

To use water resources in a mining project, it is necessary to obtain a water right granted by the Water Management National Authority (Autoridad Nacional del Agua or “**ANA**” for its acronym in Spanish) prior to the use of underground or fresh water sources.



---

## REGULATORY OVERVIEW

---

Water rights, including licenses, may be terminated by governmental authorities or courts under certain circumstances, including: (i) titleholder's resignation; (ii) nullification of the resolution approving the corresponding permit, authorization and/or license, declared by the ANA based on certain infringements to the Water Resources Law and its regulations; or (iii) revocation of water rights because of failure to pay applicable water rights fees, employment of water resources for non-approved uses, shortages of water resources formally declared by ANA or quality problems that prevent their use, among others.

Peruvian law establishes that water rights must be used efficiently without adversely affecting its quality or the environment, and taking into account primary use (such as water for food preparation, human direct consumption, agricultural activities and personal hygiene) and rights for the use of water previously granted.

Additionally, if the proposed activity generates domestic or industrial wastewaters that will be discharged into natural water sources or soil, it would be necessary to obtain an authorization granted by the ANA, with the favorable opinion of the General Bureau of Environmental Health (Dirección General de Salud Ambiental or "DIGESA").

### **Mining Stability Agreements**

Holders of mining concessions may enter into Mining Stability Agreements ("MSAs") with the MEM. These agreements grant the holder of a mining concession certain benefits such as limited tax and administrative stability, which implies that certain laws on tax and administrative matters in force at the time in which the agreement is executed will be applicable to the holder of the mining concession and the relevant mining project (as described in the agreement) for a term of 10 or 15 years starting in the fiscal year in which evidence of the compliance of the investment commitment arising thereof has been provided and approved.

The term of the stability will be (i) 10 years, for those mines with an output between 350 and 5,000 tonnes per day and with a committed investment of US\$2 million, or (ii) 15 years, for those mines with an output greater than 5,000t per day and with a committed investment greater than US\$20 million if commencing operations or US\$50 million if expanding operations.

In order to enter into an MSA, holders of mining concession must submit either a Mining Investment Program (applying for 10-year stability agreements, as referred above) or a Feasibility Study (applying for 15-year stability agreements, as referred above) to the MEM for approval.

Specifically, MSAs grant stability of the laws on, among others, the following rights and regimes, during the applicable stability term (10 or 15 years, as explained above):

- The Income Tax regime (except Income Tax rate, which is stabilized at the then-current rate plus 2%). Thus, any new tax on income or any amendment to the stabilized Income Tax regime entering into force after the execution of the MSA will not be applicable.

---

## REGULATORY OVERVIEW

---

- The mining royalty regime.
- Free commercialization of the holders' mineral products.
- Free disposal in Peru and abroad of foreign currency generated by exports covered by the MSA.
- Free convertibility into foreign currency of local currency generated by the sale in Peru of the mining products covered by the MSA.
- In respect of 15-year stability agreements only, extension of the annual depreciation rate on machinery, equipment and capital assets, up to a maximum annual rate of 20%, except for buildings, which will be depreciated at a maximum annual rate of 5%.

### Legal Stability Agreements

Legal Stability Agreements (“LSAs”) are law-contracts that can be entered into by investors (whether foreign or Peruvian) and/or Peruvian companies receiving investment, whenever an investor commits to make an investment of more than US\$5 million to a Peruvian company (US\$10 million in the case of mining and/or hydrocarbons companies). When an investor enters into an LSA, the Peruvian government grants such investor the right to stability of the laws governing the following matters:

- (a) Income Tax regime, which implies that the dividends and any other form of profit distribution will be subject to Income Tax with the rate in force at the time of entering into the relevant agreement (currently 4.1% for foreign investors; dividends distributed to Peruvian investors are not levied with Income Tax).
- (b) Free availability of foreign currency (only for foreign investors).
- (c) Right to remit abroad capital, profits, dividends and royalties, with no limitation or restriction whatsoever (only for foreign investors).
- (d) Right to use the most favorable exchange rate available in the market (for both foreign and Peruvian investors).
- (e) Right to non-discrimination (for both foreign and Peruvian investors).

Peruvian companies receiving investments are granted with the right to stability of the laws governing these matters:

- (a) Income Tax regime, which implies that (i) any amendment to the stabilized regime regarding rates, deductions or calculation of the local company's taxable income will not apply thereto and (ii) the Peruvian company will be subject to Income Tax with the rate in force at the time of entering into the relevant agreement (currently 30%).

---

## REGULATORY OVERVIEW

---

- (b) Employment regime, which implies that the company may employ its workers under any of the fixed-term modalities set forth in the current regulations governing private labor.
- (c) Promotion of exports regime (if the company exports).

The laws stabilized are those in force at the time of execution of the LSA. This stabilization will last as long as the relevant LSA is in effect. For an investor, the stability is granted solely with respect to the investment committed in the LSA. Stability for a Peruvian company receiving investment is granted for the company as a whole, it being irrelevant if the investment commitment in such company's LSA is the minimum amount required by law or a greater amount.

### **Summary of Peruvian laws and regulations regarding taxation**

The following is a non-exhaustive summary of certain material Peruvian tax consequences for shareholders holding and disposing of shares.

#### **Income Tax**

Subject to certain exceptions, Peruvian residents (companies and individuals) are subject to Peruvian income tax on their worldwide income. Non-Peruvian companies and individuals are subject to Peruvian income tax on only their Peruvian source income.

An individual is generally regarded as resident in Peru if in any 12-month period he has ordinarily resided in Peru or if he has been physically present in Peru for 183 days or more.

The corporate tax rate for Peruvian companies is generally 30%. Subject to certain exceptions, this tax rate of 30% also applies to non-Peruvian companies for income generated in Peru. In most cases, the Peruvian company counterparty is obligated to withhold and pay the applicable income tax.

Non-Peruvian resident individuals are generally subject to a tax rate (on only their Peruvian source income) equivalent to the prevailing corporate tax rate, which is equal to 30%.

A preferential 5% tax rate also applies to gains derived by foreign residents (both individuals and companies) from the sale or disposition of shares provided that they are executed through the Lima Stock Exchange.

In the case of capital gains derived from indirect transfers of shares of Peruvian companies please refer to the specific treatment explained below under the heading "Income Tax on Capital Gains on Transfer of Peruvian Shares."

#### **Dividend Distributions**

Dividends paid by a company incorporated in Peru to another company incorporated in Peru are exempted from income tax.

---

## REGULATORY OVERVIEW

---

Dividends paid by a company incorporated in Peru to a non-Peruvian company or to an individual (both resident and non-resident) are subject to a withholding tax of 4.1%. The Peruvian company that pays the dividend is obligated to withhold and pay the applicable tax.

### **Income Tax on Capital Gains on Transfer of Peruvian shares**

30% Income Tax applies in Peru in the case of gains made by “non-resident” legal entities deriving from (direct or indirect) transfers of shares issued by Peruvian resident companies.

If both seller and purchaser were not resident in Peru, the seller must pay directly the corresponding Income Tax to the Peruvian tax authorities (“SUNAT”). If the purchaser were a resident entity it will have the obligation to withhold the corresponding tax.

It is worth noting that in this particular case, considering that the seller and the Peruvian company are related parties, the latter will be joint and severally liable (as shares’ issuer) for the payment of any Income Tax arising therefrom.

The tax is calculated considering the capital gain obtained i.e. difference between the “fair market” value of the shares being transferred and their cost basis (acquisition cost) previously certified by SUNAT. For such purposes, prior to the payment of any consideration is paid in connection thereto, the seller must obtain from SUNAT a certification of the shares acquisition cost (i.e. cost basis). This procedure takes approximately two (2) months to finalize (the seller must file a power of attorney and certificate of good standing, both legalized before a Peruvian Consulate or apostilled; as well as supportive documentation evidencing the price originally paid for the shares subject matter of the transfer).

A “fair market” value rule always applies to this type of transactions. In the specific case of transfers between independent parties, the “fair market” value is equivalent to the consideration agreed by the parties to the transaction provided that it is not lower than the shares’ equity value. In turn, in the case of transfers between related parties, the corresponding fair market value will have to be supported with “transfer-pricing” supportive documentation.

### **International Tax Transparency Standards Applicable to Peruvian Residents**

International standards on tax transparency apply in Peru. Internationally, these standards are known as “**CFC Rules**” or “Controlled Foreign Corporation Rules.”

The CFC Rules are applicable to any Peruvian resident individual or company holding a direct or indirect interest, including a beneficial interest, greater than 50% in a foreign low-taxed company.

---

## **REGULATORY OVERVIEW**

---

Under the CFC Rules, a Peruvian resident will be taxed for foreign passive income earned by such an offshore entity in which it has such a holding. Passive income includes mainly income earned by the offshore entity from dividends, capital gains and interest on loans. If liable under the CFC Rules a shareholder of the offshore entity would pay any tax incurred as part of that shareholders' annual income tax filing and payment in Peru. If it were to fail to pay tax due, a shareholder would be subject to a penalty and interest on the amount not paid.

### **Value Added Tax**

The sale of goods in Peru, the render or utilization of services in Peru, construction contracts and the first sale of real property by its constructors are all subject to Peruvian value added tax of 18%.

The sale of shares of common stock of Peruvian companies is not subject to value added tax.

### **Special Mining Tax Law**

Concession holders that exploit metallic minerals are obligated to pay a special mining tax ("SMT"), determined applying an effective rate between 2% and 8.40% to a company's quarterly operating profits. The effective rate is determined by reference to the operating profit margin (operating profit margin is determined by dividing quarterly operating profit between quarterly sales.

In principle, Project Company will not be subject to SMT, as the company stabilized the tax regime applicable on 20 July 2011. However, as previously mentioned, the MSA is not in force yet and therefore any operating profit obtained before the beginning of the stability will be subject to SMT.

### **Regulatory matters regarding employment and labor legislation**

Individual labor matters in Peru are primarily governed by the Labor Productivity and Competitiveness Law.

Peruvian law establishes that foreign employees must not exceed 20% of the total personnel of a company and that wages paid to foreign employees must not exceed 30% of a company's total payroll. However, an employer may apply exceptions to those limits, among others, in the following cases: (a) for hiring high level professionals or high level specialized technicians, or (b) for hiring high level executives in a new company or corporate reorganization.

In all cases, companies are obligated to register the employment contracts entered into with foreign individuals with the labor authority. In addition, for migratory purposes, all foreign individuals are obligated to obtain a special non-immigrant resident visa before starting work.

---

## REGULATORY OVERVIEW

---

Notwithstanding the requirements referred in the previous paragraph, the law establishes a list of cases in which companies are not bound by the aforementioned limits nor required to obtain approval for the relevant employment agreement. These cases include the following: (a) individuals having a Peruvian spouse, ancestors, descendants or siblings, (b) individuals with an immigrant visa, (c) citizens of a country with which Peru has negotiated a dual nationality agreement or other reciprocation agreement.

### **Employment Contracts, Remuneration, Working Hours and Labor Benefits**

As a general rule, employment contracts are entered into for an indefinite term with all employees. Peruvian labor legislation imposes express restrictions on employment contracts with a fixed term.

However, an employment contract may be entered into for a fixed term in the situations listed below:

- The development of a new line of business, with a maximum period of 3 years.
- The temporary increase in a company's output caused by material variations of demand, with a maximum period of 5 years.
- The substitution, increase or amendment of a company's activities due to technological, output or administrative causes, for a maximum period of 2 years.
- To attend temporary needs different to the activities involved in the core business of an employer, for a maximum period of 6 months during a year.
- To replace an employee during his or her absence due to a legal or conventional cause.
- To attend an emergency situation derived from force majeure causes.
- To attend specific service or work, for the period needed to fulfill such service or work.
- To attend activities which an employer carries on permanently but not continuously, for a maximum period of 5 years.
- To attend activities related to the corporate purpose of an employer which are cyclic and arise only at determined periods during a year, for a maximum period of 5 years.

Fixed term employment contracts must be executed and registered with the Peruvian Labor Authority.

Peruvian labor legislation currently requires a minimum wage of S/750.00 (approximately US\$278) per month.

---

## REGULATORY OVERVIEW

---

In addition, labor law establishes a maximum 8-hour work day or 48 hours per week for employees older than 18 years. However, companies may implement different work schedules if needed, provided that the maximum number of hours is not surpassed for any given period and at least three rest days are granted during any three-week period.

For overtime, employers must pay at least an additional 25% and an additional 35% over the regular hourly wage for the first two hours and for any additional hours, respectively. Employees are entitled to a minimum rest of 24 consecutive hours per week.

Regardless of the type of employment contract, full-time employees are entitled to receive: (i) an additional 10% of the minimum wage, provided that they are responsible for (a) one or more children under the age of 18, or (b) persons who are up to 24 years of age if they are pursuing higher education, (ii) two additional monthly salaries per year, one in July and one in December, (iii) thirty calendar days of annual paid vacation per year, (iv) life insurance, provided they have been employed for at least four years, (v) compensation for time of service that amounts to 1.16 times a monthly salary and is deposited semiannually in May and November, provided they work the complete semester, (vi) benefits from the Peruvian Social Security in Health to which employers must contribute a rate equivalent to 9% of their employees' remuneration, (vii) profit sharing, if applicable, and (viii) a risky work insurance policy.

### **Participation in company profits**

Companies which have more than 20 employees are obligated by law to distribute a percentage of the profits generated during a year among them. Such percentage depends on the economic activity undertaken by the company. In the case of mining companies, the rate is 8%. The terms and conditions for distributing this benefit are determined by law, and employers are not able to vary such terms and conditions.

Profits must be distributed among all employees, 50% proportionally to their annual wage and another 50% proportionally to the number of days worked during the corresponding period, with a limit of 18 monthly wages per employee. The excess must be paid to the National Fund for Labor Training (*Fondo Nacional de Capacitación Laboral y de Promoción del Empleo*).

Profits must be distributed within the 30 days following the filing of the Income Tax Statement before the tax authority.

### **Safety and Occupational Health on Mining Activities**

In connection to health and safety dispositions, the Law regulating the Health and Safety at Work and its regulations apply to all employers in the country, notwithstanding the economic sector to which they belong or the activities they develop. In addition, there is specific regulation on Mining Safety and Occupational Health and its regulations, the "**Regulations on Mining Safety**" which is the key legislation in respect to safety and occupation health on mining activities.

---

## **REGULATORY OVERVIEW**

---

The Regulations on Mining Safety are aimed at preventing accidents and occupational diseases related to mining activities, by means of the promotion of a culture of labor risks prevention.

The MEM is in charge of establishing the policies and regulations on safety and occupational health on mining activities, while the SUNAFIL is in charge of supervising and monitoring compliance with the Regulations on Mining Safety by all individuals involved in mining activities.

The following main obligations are imposed on concession holders by the Regulations on Mining Safety:

- to implement a Health and Safety Management System;
- to appoint a Health and Safety Committee, with equal numbers of members representing the employer and the employees;
- to train all personnel in to health and safety matters, especially in connection to risks and dangers linked to their duties;
- to assume all costs related to safety and occupational health;
- to appoint a Safety and Occupational Health Manager;
- to assign to all its employees, free of charge, the proper personal safety equipment needed for executing his or her activities;
- to suspend operations in those areas in which the safety of the employees is at risk; and
- to facilitate on-site access to all supervisors and duly authorized persons in charge of supervising and monitoring the compliance with the Regulations on Mining Safety.

### **Unions and collective bargaining**

Companies are obligated to acknowledge unions and companies older than a year are obligated to bargain collectively with them.

Collective bargaining proceedings can be solved by any of the following measures:

- Direct negotiation;
- Conciliation or mediation;
- Strike (as a way to unlock the negotiation); and
- Arbitration.



---

## REGULATORY OVERVIEW

---

Only when strikes affect the public order can the Ministry of Labor put end to the collective bargaining proceeding by issuing a resolution to that effect.

### **Labor intermediation and outsourcing**

Companies in Peru are allowed to directly use the workforce of a third party through a labor intermediation scheme.

The characteristic of labor intermediation is the supply of personnel in a triangular relationship involving the main company, the service company and the employee, where the activity of the employee of the service company is partially directed and controlled by the main company.

Labor intermediation is admissible only for temporary services, complementary services and specialized services. Labor intermediation regulations do not allow employees of the service company to permanently provide services involving the core activity (corporate purpose) of the user company.

Besides, employees can be seconded to a company's premises when said company outsources part of its productive process. This is valid provided that the following requirements are met: (i) the contractor takes on the contracted tasks for its sole account and risk; (ii) the contractor has its own financial, technical or material resources; (iii) the contractor is liable for the results of its activities; and (iv) employees of the contractor are subordinated solely to the contractor.

The law establishes certain "features" that can help when determining if an outsourcing scheme is valid, which are basically the following: (i) the contractor has a multiplicity of customers (clients); (ii) the contractor has its own equipment; (iii) the method of retribution of the contractor; and (iv) the contract has invested capital in the endeavor.