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COUNTRY

Doing Business in
Peru

Preface

This guide has been prepared by Baker Tilly Peru, an independent member of Baker Tilly International. It is designed to provide information on a number of subjects important to those considering investing or doing business in Peru.

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This guide is one of a series of country profiles compiled for use by Baker Tilly International member firms' clients and professional staff. Copies may be downloaded from www.bakertillyinternational.com.

Doing Business in Peru has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing.

Up-to-date advice and general assistance on Peruvian matters can be obtained from Baker Tilly Peru; contact details can be found at the end of this guide.

October 2009



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1 Fact Sheet

Geography

Location	Western South America, bordering the South Pacific Ocean
Area	1,285,215km ²
Land boundaries	Ecuador and Colombia to the north; Brazil and Bolivia to the east; Chile to the south
Coastline	2,414km
Climate	Varies from tropical in the east to dry desert in the west; temperate to cold in the Andes Mountains
Terrain	Peru is divided in three regions: the coastal area comprised of large deserts, valleys and rivers; the mountainous area; and the jungle in the Amazon Basin
Time zone	GMT -5

People

Population	29 million
Ethnic groups	Amerindian 45%, mestizo (mixed Amerindian and white) 37%, other 18%
Religion	The majority of Peruvians are Roman Catholic but freedom of worship exists
Language	Spanish (official), Quechua (native Incan language), English is spoken by many professionals and executives in the business environment

Government

Country name	Republic of Peru
Government type	Democratic Republic (presidential, Unitarian and decentralised government system)
Capital	Lima
Administrative divisions	24 departments and a constitutional province (Callao)
Political situation	The State Government is divided into three branches: the Executive Power, headed by the President of the Republic; the Legislative Branch; which resides in the Congress; and the Judiciary Branch of the Supreme Court located in the capital

Economy

GDP – per capita	US\$4,477 (2008)
GDP – real growth rate	9.8% (2008)
Labour force	10.2 million (2008 est.)
Currency (code)	Nuevo Sol (S/.)

2 Business Entities and Accounting

Business activities may be carried out via the following types of entity:

- Corporation (*sociedad anonima (SA)*)
- Limited liability corporation (*sociedad de responsabilidad limitada*)
- Branch of foreign company (*sucursales*)
- Limited partnership (*sociedad en comandita simple*)
- General partnership (*sociedad colectiva*).

There are no significant local tax differences between the entities.

2.1 Corporation (**Sociedad Anonima – SA**)

The corporation is the most commonly chosen form of business entity by foreign investors.

Incorporation procedures:

- Must be formed through a founder's agreement (privately) or through a public sale of shares
- Must be incorporated via a public deed of incorporation by two or more natural persons (acting on their own or as legal representatives of others) or by a legal entity
- A copy of the deed must be delivered by the public notary in order to be registered at the public registry.

There are no set rules regarding the level of foreign investment. The only entities subject to a minimum capital requirement are banks, financial entities and certain other controlled companies.

2.2 Closely Held Corporation (**SAC**)

An SAC has a maximum of 20 partners and does not have to be a registered and regularly traded company on the Peruvian Stock Exchange. It does not have a board of directors.

2.3 Opened Joint Stock Company (SAA)

An entity is considered an opened joint company if it complies with one or more of the following:

- It has made stock or convertible stock obligations available to the public
- It has at least 750 shareholders
- More than 35% of its capital belongs to at least 175 shareholders
- It is constituted as an SAA
- All voting shareholders unanimously approve the SAA status
- It has registered its stock in the Peruvian stock market's public registry, thereby rendering the entity subject to supervision by governmental organisations.

2.4 Commercial Society of Limited Responsibility (Limited Liability Company)

This entity is similar to the joint stock company. All shareholders have limited liability.

2.5 Collective Society (SC)

The partners of an SC are jointly and severally liable and their liability is unlimited.

2.6 Limited Partnership (*Sociedad Anonima Limitada*)

This form of limited partnership can fall into one of two categories:

- **Simple (S in C)** – Consists of partners and other partners (contributors) with limited liability to the extent of their investment
- **By stock (S in C by A)** – Consists of collectives with unlimited liability and contributories with limited liability. In this case the capital is divided into stock belonging to the collectives or contributories.

2.7 Branch

Under Peruvian legislation, a branch is any secondary establishment of a local or foreign company in a different location. It is not regarded as legally independent or a separate legal entity.

In the event that the foreign investor chooses to set up a branch, the same tax guidelines apply as for a corporation.

Each of the above business entities must be registered with the public registry.

Extra requirements apply to branches of foreign entities.

In order to register a branch of a foreign company, the legal representative in Peru of the foreign entity must present the following documents before a public notary:

- Copy of the constitution documents of the foreign entity
- Copy of the agreement to establish the branch. This agreement must specify:
 - The amount of capital available for its activities
 - Declaration that such activities are permitted by the constitution of the foreign entity
 - The address of the branch
 - Name of the person(s) designated as representatives in the foreign location, the specific powers with which they are entrusted and a description of their understanding of the laws of Peru and how they will be held accountable for the obligations of the branch
- Certificate of use of the parent company in its country of origin, where nothing is stated in its social pact or in its statute to prevent the establishment of branches abroad.

The indicated documents must be legalised by a public notary or an official government organisation in the country of their constitution. The companies then must be authenticated by the Peruvian Consul.

In addition, the signature of the Peruvian Consul must be authenticated by the Minister of Foreign Relations. Any document in a foreign language must be translated by an official translator.

It is the responsibility of the legal representative to ensure that the business activity is properly registered.

The specific powers of the legal representative can vary according to the policy of the foreign entity but it must be sufficient to afford appropriate representation in Peru.

It is recommended that the representative has the legal right to bind the foreign entity. The parent company is not required to register its financial statements in Peru.

2.8 Association in Participation

Two or more parties may subscribe to a contract of association in participation. The contract of association enables associates to participate in the earnings of the businesses or companies of the associates. Each associate takes on the responsibility of a director of the business in which they participate.

The association in participation does not give rise to a separate legal entity.

2.9 Contract of Partnership (Joint Venture)

Under this contract of collaboration, two or more parties agree directly or actively to participate in a joint venture in order to obtain economic benefit. Each party maintains their own autonomy.

Each member of the partnership has unlimited liability. The contract must clearly state the terms of the agreement and should be understood by both parties.

For tax purposes the parties are treated as independent if they account for the collaboration independently. Otherwise the collaboration is taxed as an individual entity.

2.10 Limited Liability Company (EIRL)

An EIRL is a form of enterprise constructed as a separate legal organisation distinct from its owner, who must be a natural person. The responsibility of the owner is limited to their contribution. This form of organisation is governed by a specific legislation.

2.11 Auditing and Accounting Requirements

Accounting records must be expressed in Spanish.

The financial statements must be prepared in accordance with IFRS regulations.

The financial statements must be dominated in the Peruvian national currency (Nuevos Soles S/.).

Entities that trade on the Peruvian Stock Exchange (under the supervision of CONASEV) are required to present audited financial statements. Such entities are required to make quarterly returns to the stock exchange and other regulatory bodies.

2.11.1 Requirements of external audit

An annual external audit by an independent public accountant is required in the following cases:

- When a company's constitution includes such a requirement
- When specifically solicited by shareholders holding not less than 10% of the voting rights
- When 50% of the shareholders vote in favour
- When the company has been incorporated as an SAA
- When required by specific legislation.

2.11.2 Books and registers

Ledgers and accounting registers must be legalised by a public notary. Breach of this is sanctioned with a fiscal fine.

The fiscal year for Peru coincides with the calendar year.

Insurance companies, banks and other regulated companies are required to publish their balance sheets and profit and loss statements in El Peruano, the official newspaper of Peru, and another local daily newspaper.

The meetings of shareholders and the meetings of directors must also be minuted in registers and legalised by a public notary.

3 Finance and Investment

3.1 Banking System

There are 12 main commercial banks, many of them foreign owned. It is estimated that around 70% of the market is dominated by just three banks – Banco de Credito, BBVA Continental and Scotiabank.

The main government development bank is COFIDE, which offers state regulated development assistance. However as a “second tier” bank, it is unable to channel funds independently.

3.2 Capital Market

The Peruvian capital market is in a development stage. Peru is attracting an increasing number of private investors.

3.3 Regulatory Bodies

3.3.1 National Supervision of Administration Tributary (SUNAT)

SUNAT develops and issues tax regulations. It has the power to audit tax returns and seek collection of unpaid or underpaid tax. It is also responsible for negotiating with other countries if there is a conflict as to the jurisdiction in which a taxpayer owes taxes.

3.3.2 Supervisory of Bank and Insurances (SBS)

SBS is responsible for the supervision of the Peruvian financial system. Since 2000 it has also had the task of supervising the private pension funds system (Administration of Pensions (AFP)).

3.3.3 CONASEV

CONASEV is Peru’s Securities and Exchange Commission. Its main job is the enforcement of Peru’s security laws. Investors may apply to CONSAEV to investigate complaints and settle disputes.

3.4 Investment Opportunities

There is no legal distinction between national and foreign investors. In general, companies have the right to offer stock to national or foreign investors. Some sectors have, however, instigated their own specific restrictions.

Foreign investment does not generally require prior authorisation by the central government, except for banking and financial activity. Foreign investors should register their investments with the relevant governmental organisation.

3.5 Repatriation of Capitals and Gains

There are no restrictions on the repatriation of capital.

3.6 Guaranteed Rights

As soon as an investor has registered with the respective governmental organisation they are required to transfer to their respective countries the gain or loss incurred over the sale of stock or transfer in capital rights, dividends, exemptions, interest and any previous payment of corresponding taxes.

3.7 Agreements of Legal Stability

Foreign investors can establish agreements of legal stability with the State guaranteeing tax stability for a term of ten years.

The agreements stipulate the effective tax rate and provide the investors with safeguards with respect to freedom to trade foreign currency, to transfer capital, to remit funds overseas and transfer dividends, exemptions and earnings abroad.

3.8 Imports and Exports

The State guarantees the freedom of foreign trade, although certain goods are subject to tariffs such as general sales tax and VAT.

The tariffs on imports are based upon their respective SIC code and are calculated with reference to the fiscal value. The import of capital goods usually carries a 0% rate. The rate for other imports typically varies from 4% to 20%.

There is a limited list of products that cannot be imported or exported, such as arms and ammunition. Exports are generally not subject to any taxes.

3.9 Distribution of Dividends

A number of regulations apply to the distribution of income to shareholders. In particular:

- Dividends cannot be paid if net equity is less than paid capital
- All shares, whether or not they are fully paid-up, have the same rights to dividends

- The distribution of dividends is outlawed for certain entities
- If dividends are distributed contrary to the recommendation of management, the responsibility for payment falls exclusively to the shareholders who voted in favor of the agreement.

The board members have the power to decide the value of the distribution.

3.10 Dissolution and Liquidation

The decision to dissolve a business must be agreed in the general meeting of shareholders (JGA) or at a meeting of partners and must be published in three consecutive issues of the national official newsletter within ten days of the agreement.

The liquidation procedure is carried out by the shareholders. The assets are totalled and any creditors are paid back first. After all obligations have been settled, the final balance is divided amongst the shareholders.

4 Employment Regulation and Social Security

4.1 Work Contracts

Work contracts can be either written or verbal. The terms agreed upon in the work contract must be recorded in writing and delivered to the work authority.

Once the assignment commences, the employee must complete a trial period of three months, during which time they can be dismissed without right to payment or appeal. This term can be prolonged to six months or one year in certain cases.

4.2 Labour Mediation

Labour mediation is available for non-core business issues. Only non-core staff have recourse to labour mediation.

4.3 Employer and Worker Registry

All employees are required to register with the Ministry of Work, System of Health (EsSalud), System of Pensions and with SUNAT.

4.4 Payroll Requirements

Each employer must maintain a list of remuneration payable to their employees.

Employers must register their workers within two hours of commencement of the assignment.

Each employer must keep details for each of their workers (excluding those who work from home) including full name, sex, date of birth, ID, date of commencement and cessation, position or occupation, remuneration, deductions of contributions and taxes, and holiday details.

Workers are required to sign for payment received from the employer. The employer must retain the duplicate receipts, remuneration lists and worker's details for five years.

4.6 Legal Day

The ordinary day of work is eight hours a day or 48 hours a week; additional limitations apply to minors. Managers, administrators and other executives are not subject to these limitations.

4.7 Termination of Employment

According to labour legislation termination of employment occurs on:

- Death of the worker or dissolution or death of the employer
- Resignation or optional retirement of the worker
- The completion of the contract of employment
- Dismissal. The worker must be given adequate warning and opportunity to resolve the issue.

In cases of wrongful dismissal, the worker is entitled to payment of compensation equivalent to an average monthly remuneration multiplied by the years of service subject to a maximum of 12 years.

4.8 Salary

The employees have right to tax free payment for overtime. Overtime is paid at a premium agreed between the parties. The minimum premium is 25% of the normal hourly wage for the first two hours and 35% thereafter.

4.9 Social Security

The general State social security system (EsSalud) provides health coverage as established by law. The rate of employer contribution is 9%.

Generally, employees registered on the payroll are covered by EsSalud. An employment contract is the only formal requirement for obtaining insurance coverage regardless of the hours worked.

Statutory deductions are made by the employer and are paid over to SUNAT.

4.10 National Pension Plan

The National Pension Plan is administered by the Office of Provisional Normalisation (ONP) and provides pensions for employees and retired workers who have contributed a minimum of 20 years.

The amount of pensions is determined according to the remuneration gained by the worker and to the years of contribution to the system.

4.11 Private Pension Systems

The AFP administers a mandatory system of pensions that guarantees pensions for retirement, disability, pensions of survival and expenses of burial.

The contributions go into a private individual fund. This fund is financed solely by employee contributions and earned interest.

For these effects, the workers must contribute with 10% of their insured monthly wage plus commissions to the AFP and insurance premiums for handicap coverage on experience and burial, totalling approximately 12%.

4.12 Complementary Insurance for Hazardous Work (SCTR)

The SCTR was established for officially registered workers carrying out high risk activities.

This insurance is obligatory and is assumed on behalf of the employer covering different health risks, professional pensions, disability services and expenses of burial as a result of industrial accidents or diseases.

4.13 Foreign Personnel

Foreign personnel are obliged to sign a work contract which must be approved by the relevant authority.


All foreigners must apply for a work or residency visa. This application must be guaranteed by a letter from the employer filed with the immigration department.

Visas are valid for one year and can be renewed during the term of the employment contract.

There are limits on the number of foreigners working for Peruvian employers. Up to 20% of the registered workers may be foreign. The foreign workers should not account for more than 30% of payroll costs in aggregate.

The following people are not classed as foreigners:

- Those married to Peruvian national
- Those with children born in Peru
- Those with an immigrant visa
- Those whose country of origin has a treaty of labour reciprocity with Peru

- Personnel of certain foreign companies engaged in international transport
 - Foreign personnel working for certain multinational companies
 - The foreign investor if included on the payroll, whether or not they have waived the right to repatriate capital investments or profits, provided that the investment is not less than S/3,500.00
 - Peruvian entertainers and sports people up to a maximum period of three months per year.
- 

5 Taxation

5.1 Income Tax

5.1.1 General aspects

The Law of Income Tax on Individuals is categorised into four groups. The taxable income of each one of the categories of income is determined separately. The results are then consolidated and the tax is determined applying the corresponding rate on the global net income.

Each tax unit is equivalent to S/3,550

Bracket	Reference in Tax Units	Tax Rate
1	Up to 7 UIT	0%
2	From 7 to 27 UIT	15%
3	From 27 to 54 UIT	21%
4	Over 54 UIT	30%

The income tax rate for companies is 30% of the taxable income.

5.1.2 Contributors

Peruvian domiciles are taxed in Peru on their worldwide income. Non-domiciled individuals are taxed only on their Peruvian income.

Non-domiciles are entitled to a foreign tax credit for the taxes paid abroad up to a maximum of the tax actually suffered.

Companies are taxed on their capital gains.

The amount of Peruvian source income as well as the amount of foreign source income must be declared in Peru, except in the case of branches of foreign companies.

In general, individuals are not taxed on capital gains.

5.1.3 Deductions

In general, expenses are deductible to the extent that they are deemed necessary to produce taxable income or to maintain its source.

Certain expenses such as financial expenses, provisions, bad debts, travel, salaries and gifts may be subject to restrictions.

In general, expenditure on patents and equipment rental are deductible in full.

Incorporation expenses, including taxes, can either be deducted in the first year or be amortised up to a maximum of ten years.

5.1.4 Depreciation of fixed assets

The most common depreciation method used in Peru is the straight line method. For tax purposes depreciation is restricted as follows: buildings 3%, cattle 25%, vehicles 30%, machines and equipment 20%, equipment for data processing 25%, other fixed assets 10%.

5.1.5 Intangible assets

Limited life intangible assets are those whose lifespan is limited by law or the nature of the asset. Amortisation commences when ownership is transferred.

The cost may either be deducted in full or amortised over ten years.

Trademarks and patents cannot be amortised and they are not considered to be active intangible assets or assets of limited duration.

5.1.6 Tax treaties

Peru has international agreements with Sweden and the other members of the Andean Community of Nations to avoid double taxation.

Agreements also exist to avoid double taxation with both Canada and Chile.

5.2 General Sales Tax (IGV)

This tax applies to the following activities:

- The sale of goods
- Benefit or use of services
- Import of goods
- Contracts of construction
- Initial sale of buildings by the constructor.

This tax is payable monthly and the amount due is the excess of the IGV charged over the IGV suffered on purchases of goods and services. If IGV suffered exceeds IGV charged it may be applied to subsequent periods.

The tax obligation arises at the earlier of the transfer of goods and receipt of payment.

The following services are exempt from IGV:

- Credit provided by banks, financial and credit institutions
- Public transport of passengers excluding aerial transport
- Transport and shipment services and commissions in respect of import and export of goods
- Gains arising on certain registered bonds and life policies.

The following services are classified exports of services and are not taxed:

- Consulting services and technical assistance
- Renting of personal property
- Advertising and publicity services such as investigation of markets and public opinion services
- Data processing services, application of computer science programmes etc
- Positioning services such as the provision of personnel (manpower)
- Commission services through credit positioning
- Financing operations
- Reinsurance and savings
- Telecommunication services aimed at carrying out a service originated abroad, with respect to the compensation terms agreed upon with the foreign operators in accordance with the norms of the Agreement of Union the International of Telecommunications
- Mediation services, including tourism organisations carried out by persons domiciled in the country in favour of agencies or domiciled foreign tourism operators
- Temporary cession of rights of use or dispersal of audiovisual national works and all the other national works that are expressed by means of analogous process to the cinematography.

In the case of any of these aforementioned services, the tax obligation is originated when the invoice is produced or when the payment is received, whichever happens first.

The tax rate attributable to the importing of capital goods is usually 0%.

5.3 Excise Tax

Excise tax is charged on the sale of specific goods such as gasoline and its derivatives, cigarettes, beer, alcoholic drinks, vehicles, etc.

Tax rates are 0%, 2%, 10%, 17%, 20%, 30% and 125% depending on the type of good or service.

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Notes



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