

The legal framework to incorporate a company in Perú

Corporation Issues:

Peruvian Corporate Law provides for various of Corporations where the parties are solely obliged to contribute to the paid-in capital with the amount of money they have agreed to contribute, as provided in the articles of incorporation the parties or shareholders are not liable for any debt or obligation assumed by the company.

Furthermore Peruvian Corporations are considered as juridical persons independent of their shareholders.

General Issues:

In general terms we must mention that the Peruvian Constitution, dated October 31, 1993, grants equal rights between foreign and national investors and guarantees the free possession, use and disposition of local and foreign currencies in Peru.

Furthermore, Legislative Decree N° 662 dated August 29, 1991 establishes a legal stability regime for foreign investment guaranteeing that foreign investors will not be discriminated against and that they will have free access to the foreign currency market and to the country's productive sector, without state intervention.

Foreign investments made in the country through the local financial system are automatically authorized. Once made they must be registered with PROINVERSION (National Commission for Foreign Investment).

Moreover, foreign investors are entitled to transfer abroad - -after taxes- -. in a freely convertible currency, using the most favorable exchange rate in force at the time of the transaction, and not subject to prior authorization by the Central Bank nor any Governmental Authority with respect to the full paid capital obtained from their investments, net dividends or profit as to the taxes applicable to the remittance of dividends. We must point out that under Peruvian Income Tax Law, dividends paid to non-domicile entities or natural persons are subject to a tax. On the other hand, corporations are levied with Income Tax based on their obtained profits.

The most important taxes that a company incorporated in the country will have to pay, such as Income Tax, Temporary Tax on Net Assets, Value Added Tax (VAT) and Financial Transaction Tax (Deposit Tax).

Bylaws' Corporations

In general terms, corporations are ruled by their corresponding bylaws which incorporate all the provisions for the rights and duties of the shareholders (delimitation of corporate purpose), amount of paid-in capital, issuance and transfer of shares, pre-emptive rights, class of shares, voting rights, dividend payment, etc. with respect to the company, as well as all rules for the corporate structure which are basically the following:

1. **Shareholders Meetings**: Being the supreme corporate body which is entitled to rule and regulate the life of the corporation having all the powers and rights to amend the by-laws of the corporation, appoint the board of directors and other officers of the company, approve the financial statements of the company, increase and reduce the paid – in capital, merge, spin- off, among other duties.
2. **Board of Directors**: Being the highest administrative corporate body of the corporation; its main duty is to give the guidelines for the operation and management of the business as well as to supervise and control the operation of the company business. It is also entitled to appoint the general manager (CEO) and the rest of the officers of the company and grant all power of attorney to officers and representatives of the company, among other duties.
3. **General Manager (CEO)**: Who is the person responsible for the day to day operations of the company and to enter into all contracts and agreements on behalf of the company in order to fulfill the corporate purpose and is responsible for the company's books and records among other duties.

We must mention that the first step to be taken for the incorporation of a Corporate in Perú shall be to agree on the terms and conditions of the bylaws, where by the amount of the paid capital assigned to the company shall be determined.

The shareholders need to grant a power of attorney to a person who shall be in Perú at the time of the signing of public deed containing the bylaws of the company. Said power of attorney shall be duly registered in the Peruvian Public Registry in order to be entitled to act on behalf of your company in the incorporation of the Corporation in Perú.

Once the company is duly incorporated and registered before The Public Registry, a registration within the tax authorities shall be obtained before initiating any activity. The period of time for the registration of the local company in The Public Registry and obtaining tax registration is 30 days.

Sincerely,

URSULA CORTÉS GUTIÉRREZ

Partner

ucortes@ellb.com.pe