Regulations of American Business Interests in Peru – Basic Information for American Attorneys.

J.M.F.
I. INTRODUCTION

As a consequence of the increasing economic development of many Latin American countries since World War II, and the current necessity of United States manufacturers to protect their investments in these countries, American lawyers are being called upon with ever increasing frequency by clients preparing to establish operations in one or more of the Latin American Republics. The American lawyer has therefore been required to become generally familiar with the civil law systems, and to develop a working knowledge of the corporate, tax, and labor laws of these countries, at least sufficient to permit informed discussion with local counsel.

This article is offered in the hope of helping to satisfy the need for information with regard to the status and treatment of foreign corporations carrying on business activities in the Republic of Peru.

Peru has maintained a relatively high degree of economic stability, has avoided hampering governmental restrictions, and has enacted legislation designed to attract investments through tax incentives and other liberal provisions. The absence of exchange controls, the freedom of investors to repatriate capital and its earnings, and the enactment of liberal legislation, attest to the positive efforts made by the Government to attract private capital.

II. HISTORY AND PROFILE OF PERU

Peru occupies the central section of the west coast of South America with an area of 496,222 square miles and a coastline of 1,400 miles on the Pacific Ocean.\(^1\) It is the fourth largest Latin American Republic ranking after Brazil, Argentina, and Mexico. It is comparable in area to the States of California, Washington, Oregon, Idaho, and New Mexico combined.

The country straddles the giant ranges of the Andes, which constitute the

\(^1\) Rodriguez, MARKET FOR U.S. PRODUCTS IN PERU 11 (U.S. Dep’t of Commerce 1961).
dominant feature geographically, but the larger part of its territory lies on the eastern slopes and in the Amazon basin. Peru's coastline runs in a generally northwest-southeast direction. To the north of Peru lie Ecuador and Colombia; to the east, Brazil and Bolivia; and to the south, Chile. The northernmost point of Peru is just below the Equator.

The country is divided into three well-defined geographic areas: the narrow coastal desert, 10 to 100 miles wide, where the capital (Lima) is located; the high sierra zone of the great Andean cordilleras which culminate in snow-clad Mt. Huascaran, 22,000 feet above sea level; and the montana, consisting of vast, uncharted hills, forests, and tropical jungle lowlands through which the great rivers wind to the Amazon.²

The population of Peru is estimated at 10,789,000 and growing at an annual rate of about 2.5%; roughly 2 million of the country's inhabitants live in metropolitan Lima.³

About 53% of the population is classified as "white" or "mestizo" (mixed), 45% percent as Indian (descendants of the Incas), and the remainder as Asiatics, Negros, or undeclared.⁴

Spanish is the language of Peru. However, many of the Indians still use Indian dialects. Roman Catholicism is the state religion.

About 58.6% of the labor force is engaged in agricultural activities, 18.9% in manufacturing, 5.5% in commerce, 4.6% in services, 3.3% in government, 1.8% in mining, 0.4% in banking and finance, and 6.9% in other pursuits.⁵

The per capita income for the country as a whole is estimated at $200 annually. The average white collar salary in Lima is $125.00 a month, while the average blue collar wage in Lima is $1.84 a day.⁶

Peru is a Republic with a centralized form of Government. For administrative purposes the country is divided into 23 Departments and 1 Constitutional Province. These units are governed by prefects appointed by the President. Although the Constitution of April 9, 1933 (which, with slight amendments, is now in effect) provided for Department Councils "at the places determined by law," such organs have not been created. Appointed municipal councils, which exist in the capitals of Provinces and districts, have some local functions.⁷

The President is elected for a 6-year term and cannot be re-elected except after the succeeding presidential period has passed. The legislative power is vested in a Senate and Chambers of Deputies. Members are elected from

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²U.S. Dep't of State, Background Notes: Peru 1 (1965).
⁴Rodriguez, op. cit. supra note 1, at 12.
⁵Ibid.  
⁶Peru Needs Machinery, supra note 3, at 3.
electoral districts for terms of 6 years, both bodies being renewed in their entirety at the same election at which the President is chosen.

Judicial power is exercised by upper courts (tribunales) and lower courts (juzgados). A Supreme Court sits at Lima.

In this century Peruvian governments have alternated between constitutional civilian and extra-constitutional military regimes. In 1948 General Odria led a military coup which overthrew the constitutional Bustamente government. His mild and economically progressive military regime remained in power until the 1956 elections, when Dr. Manuel Prado won with the support of the left-of-center Popular American Revolutionary Alliance. Prado's regime, characterized by a high degree of political democracy, was overthrown in mid-1962 by a military junta. Free elections were held again in 1963 and were won by Arquitecto Don Fernando Belaunde Terry, of the Popular Action Party in a coalition with the Christian Democratic Party.8

President Belaunde has succeeded in enacting several far-reaching pieces of legislation such as an agrarian reform law, as well as measures designed to spur the growth of the country's manufacturing industry by means of tax incentives.8

The Communist Party does not have legal status as a political party in Peru and has a very small membership. It nevertheless has established a number of front groups, and is active, with a limited degree of success in various fields, including labor, students, intellectuals, and increasingly in the more depressed provincial areas.

Peru has a sound basis for economic and social development, as its economy is stable and diversified. The current GNP is $2.8 billion and has been increasing at more than 5% annually since 1960.10 Peru is basically an agricultural country but mining also occupies an important place.

Peru is relatively free of Government controls on foreign trade. Apart from restriction on trade with the Soviet bloc,11 custom tariff duties, and the usual documentation, there are no impediments to foreign trade imposed by the Government. A single freely fluctuating rate of exchange, established in May 1960, has been maintained,12 and importers can purchase foreign exchange from commercial banks without restrictions.

United States trade with Peru is governed by the General Agreement on

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8 Supra note 2, at 3.
9 For an excellent article on President Belaunde and his reform legislation, see Time, March 12, 1965, p. 32.
10 Supra note 2, at 3.
11 Imports of goods produced in the Soviet bloc were prohibited by a Supreme Decree of March 11, 1955. This ban was lifted with respect to Czechoslovakia on December 31, 1954.
12 The Peruvian sol of 100 centavos is equivalent to $0.0373. There are coins of 1, 2, 5, 10, 20, 50, and 100 centavos. There are notes of 5, 10, 50, 100, and 500 soles. Also, the metric system of weights and measures is used in Peru. One metric ton equals 1,000 kilograms; one kilogram, 2.2046 pounds; one meter, 39.37 inches; one liter, 1.0567 liquid quarts.
Tariffs and Trade (GATT),\textsuperscript{13} which accords most-favored-nation treatment to imports from the United States. Under an exception provided in the GATT, most-favored-nations treatment is not accorded in the case of the preferential rates granted to Chile under the Chile-Peru Trade Agreement of 1941.

Peru, on February 18, 1960, became a signatory to the Treaty of Montevideo, which established a Latin American Free Trade Association (LAFTA).\textsuperscript{14} The purpose of LAFTA is to establish an intraregional trade area in which virtually all duties and restrictions on goods imported by one member from any other member are to be gradually eliminated by 1972.

III. DIFFERENT TYPES OF BUSINESS ORGANIZATIONS IN PERU
A business may be conducted in Peru as a sole proprietorship, a partnership, or a corporation. Very much the same factors which are weighed in the United States in making a choice among these three business forms are also taken into account in Peru.

The principal business forms permitted in Peru are (1) the sole proprietorship (comerciante particular), (2) the corporation (sociedad anominia), (3) the unlimited commercial partnership (sociedad colectiva), (4) the limited commercial partnership (sociedad en comandita), (5) the civil partnership (sociedad civil), and (6) the limited civil partnership (sociedad de responsabilidad limitada).

A. Sole Proprietorship
The one-owner type of business is usually limited to small businesses. The individual starting in business by himself, whether a foreigner or Peruvian, in most cases simply obtains the necessary permits and licenses and sets up shop, taking title to property, renting, buying, and selling in his own name.\textsuperscript{15}

In Peru a Public Mercantile Register is maintained for recordation of legal papers such as business organization documents, titles, and certain contracts.\textsuperscript{16} An individual merchant is not compelled to register his business in the Public Mercantile Register, but if he does not do so, he is barred from using the register for the recordation of any other legal papers.\textsuperscript{17} The sole owner of a business of any size, therefore, will likely decide to register. Recording fees are nominal. The following data, among others, regarding the sole proprietorship, are required for registration:

\textsuperscript{13} Peru joined GATT on October 8, 1951.
\textsuperscript{14} Parties to the LAFTA in addition to Peru are Argentina, Brazil, Chile, Columbia, Ecuador, Mexico, Uruguay, and Paraguay.
\textsuperscript{15} Supra note 7, at 135.
\textsuperscript{16} "WORLD TRADE INFORMATION SERV., ESTABLISHING A BUSINESS IN PERU 8 (part 1, no. 62-78, October 1962).
\textsuperscript{17} "CODE OF COMMERCE, art. 17-18 (Peru 1902).
1. Name,
2. Type of business,
3. Date business commences,
4. Address,
5. Title to property, patents, and trademarks,
6. Powers of attorney.\textsuperscript{18}

All merchants must keep books of account and are subject to taxes and labor laws.

\textbf{B. The Corporation}

The Peruvian Corporation Law\textsuperscript{19} is considered extremely liberal. It is brief and is silent on many things that are frequently treated in detail by corporation statutes.

One of its most unique aspects is that it does not, except in three cases, require the consent of the Government to the formation of a corporation. These three exceptions are banks, insurance companies, and savings institutions. For any of these the consent of the Peruvian \textit{Superintendencia de Bancos}, a branch of the Ministry of Hacienda, must be obtained.\textsuperscript{20}

The State's only requirement, besides payment of the taxes involved, is that the founders follow the general law that it imposes for governing the birth of a corporation. If the founders comply with this statute they will create a Peruvian corporation. If they do not do so they will not have created a legal entity. But it will be presumed that they have done so until they are successfully attacked by an interested person showing that they have not complied with all the requirements of Peruvian law for creating the legal entity of limited liability called a corporation.

The articles of incorporation of a Peruvian corporation consist of a contract between the incorporators that must set forth:

1. The name of the incorporators and their domiciles.
2. The name of the corporation and its domicile. The name must be "adequate" for the object of the corporation. It must not be "identical" to that of any other pre-existing corporation.
3. Designation of the person or persons to whom is to be entrusted the active management of the company and the method of filling replacements of such persons because of death, discharge or other cause.
4. The amount of capital.
5. The number of shares that will be issued to represent the corporate capital and show the division thereof.
6. The time within which the subscribed capital must be paid up.

\textsuperscript{18} \textit{Id.}, art. 21.
\textsuperscript{19} \textit{Id.}, art. 17, 124, 126-130, 159-181.
\textsuperscript{20} \textit{Boesen, Rights & Duties of Foreign Businesses Under Peruvian Law} 215 (1952).
7. The duration of the corporation.
8. The object or objects of the corporation.
9. The time for holding, and methods of calling regular stockholders' meetings. Also under what circumstances a special stockholders' meeting may be called and the method of calling it.
10. Provisions requiring that any matters laid before a regular stockholders' meeting, duly called, be settled by a majority vote.
11. The method of constituting a majority present at both regular and special stockholders' meetings for making binding stockholder decisions.
12. The articles of incorporation may also contain all special agreements and conditions affecting corporate operations that the organizers deem appropriate to insert.²¹

Both the articles of incorporation and by-laws must be formalized as an *escritura publica* by a Peruvian notary and entered in his records.²² The corporation is brought into legal existence upon registration of the articles of incorporation and by-laws in the Mercantile Register of the Province in which it is to do business.²³

The Peruvian corporation's capital consists of shares subscribed by shareholders whose liability is limited to the extent of their shareholdings. It is a juridical person with its own name, domicile, and property. It can sue and be sued in its own name.

By law, at least two parties must act as incorporators.²⁴ Except for a few cases, the domicile or nationality of incorporators or directors is not stipulated. Directors need not be shareholders. No prohibition is present against holding directors' or shareholders' meetings abroad. The law is silent as to minimum requirements of capital for incorporation purposes, but some capital must be paid in. The duration of the incorporation is not limited.

The powers of the managers of the corporation depend to a great extent on the provisions contained in the articles and the by-laws. The articles must provide for the manner of filling vacancies in the board of directors and for the time and method of calling shareholders' meetings to make binding decisions of proper matters duly called before the meeting. The corporation law is silent as to compulsory stockholders' meetings, but a corporation could

²¹ CODE OF COMMERCE, art. 127 (Peru 1902).
²² This is not the notarial procedure used in the United States. Contracts and other legal documents recorded in a notary's books in Peru become public records and cannot be attacked or altered.
²³ CODE OF COMMERCE, art. 150 & 160 (Peru 1902).
²⁴ Articles 124 and 159 of the Commercial Code, read together, denominate the act of incorporation as a contractual act by which two or more promisors (*otargantes*) agree to place assets in a common fund to engage in business for profit. Because other provisions of Peruvian corporation law are flexible, however, the second party may be no more than a dummy or have no more importance than an incorporator in the United States. Moreover, once a corporation is formed its shares can be acquired in their entirety by an individual or corporation.
not operate and comply with provisions of the tax laws without holding at
least one stockholders' meeting a year. The law also provides that the direc-
tors shall be designated in the manner prescribed in the articles or by-laws.25

The day-to-day management of a corporation is usually entrusted to a gen-
eral manager appointed by the stockholders or by the board of directors and
its overall management to the board of directors. Managers and directors are
not personally liable for legal acts authorized by the corporation.26 Except
for the right to examine the accounts from which the corporation's balance
sheet is drawn, shareholders have no right of inspection of corporation af-
fairs, unless provided otherwise in the articles or by-laws. Every corporation,
however, must publish its balance sheet at least once a year, or every 6 months
if capitalized at more than 25,000 soles.27

Matters relating to dividends are left to the discretion of the corporation
or are dealt with in the articles of incorporation or by-laws. However, the
capital of the corporation cannot be increased or decreased nor may the cor-
poration be modified or dissolved except by resolution passed by at least two-
thirds of the shareholders, holding two-thirds of the face value of the cor-
poration shares, at a meeting called with sufficient notice. The capital of the
corporation may not be reduced, without the consent of creditors, to an
amount which would exceed the debts and obligations of the corporation by
75 percent.28

The corporation may never borrow by pledging its own shares. It may
buy its own shares only out of profits and for the sole purpose of retiring
them.29

In Peru, as in the United States, shares are the parts into which the capital
of the corporation is divided and a stock certificate is evidence of ownership
of a certain number of shares.30

Two types of shares are authorized: (1) Nominative or register shares (ac-
ciones nominativas) and (2) bearer shares (acciones al portador).31 The dif-
ference between these types of shares is sharp, but no legal requirement
has been established for the minimum value of either type.32

The nominative share must be registered in the name of the specific owner
in the books of the corporation. Each successive transfer is also recorded, for
dividend payments are only to the owner of record.33

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25 Supra note 7, at 137.
26 Ibid.
27 CODE OF COMMERCE, art. 165 (Peru 1902).
28 Supra note 16, at 9-10.
29 Ibid.
30 CODE OF COMMERCE, art. 167-176 (Peru 1902).
31 CODE OF COMMERCE, art. 167-176 (Peru 1902).
32 DeLavalle, A STATEMENT OF THE LAWS OF PERU: IN MATTERS AFFECTING BUSINESS 20
(1965).
33 Boesen, op. cit. supra note 20, at 220.
Bearer shares, on the other hand, are transferable by mere delivery, and dividends are paid to the holder of the bearer share certificate. Owners of this type of share are notiﬁed of shareholders' meetings through required newspaper notices. They establish the right to participate by presenting adequate evidence of ownership.

All shares, even those intended to be bearer shares, remain nominative, or keep their owner identiﬁed on the stock record by name, until 50 percent of their face value has been paid. Thereafter they may be converted into bearer shares if proper authorization has been given in the corporation by-laws or by resolution. Each share certiﬁcate must show on its face the amount paid into the corporation or the certiﬁcate's par value. The ﬁrst and subsequent owners of nominative shares are liable to the corporation, at its election, for the difference between the paid-up and par values of the share. In the case of bearer shares, however, only the holder of the share at the time of call is liable in this regard.

C. The Unlimited Commercial Partnership

The unlimited commercial partnership is analogous to the unlimited partnership in the United States and consists of a contract whereby two or more persons contribute capital or services with the objective of carrying on a business for proﬁt. Partners contributing money or property are denominated capitalista and those contributing services only are denominated industriales.

The partnership contract must express or indicate:

1. The name and domicile of each partner.
2. The partnership name.
3. Names of partners who are to manage the partnership and to have authority to sign the ﬁrm name.
4. Capital contribution of each partner.
5. Duration of partnership.
6. Maximum amount each managing partner is assigned for expenses he may incur in behalf of the partnership.
7. All special agreements between partners as to any other phase of the partnership.

Although de facto partnerships are recognized to protect third persons and for other limited purposes, a partnership is not legally constituted until the

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8 Id., at 219.
9 Id., at 220.
10 Id., at 221.
11 CODE OF COMMERCE, art. 124-158 (Peru 1902).
12 BOESSEN, op. cit. supra note 20, at 148-149.
13 CODE OF COMMERCE, art. 127 & 133 (Peru 1902).
partnership contract is formalized as an *escritura publica* by a Peruvian notary and registered in the Mercantile Register. Subsequent agreements or modifications of the contract, including dissolution, also must be recorded.

By their contract, partners may agree as they wish regarding the terms which are to govern the partnership business, including the division of losses and profits. As to losses, however, no agreement is permitted which would free any *capitalista* partner from unlimited obligation to pay for partnership debts, if such debts cannot be satisfied out of partnership assets or by the partners in accordance with the agreement made as to debts between the partners.

Partners may examine the partnership books at any time, and no partner can sell or otherwise transfer his partnership interest without the consent of all partners. In general, only the partners given managerial authority by the recorded partnership agreement may act legally for the partnership in relation to third persons. The partnership must operate under the names of all the partners, or carry the name of at least one partner with the words "y Compania" added. Undisclosed agreements among partners are not valid.

Unless the partnership agreement provides otherwise: (1) Each partner receives that proportion of profits that his investment bears to the total investment of all the partners, except that an *industriales* partner, contributing no capital but services only, shares in the partnership profits only in an amount equal to that of the *capitalista* partner with the smallest profit participation, and (2) each *capitalista* partner bears losses in proportion to his investment, while the industrial partner bears no loss.

D. *The Limited Commercial Partnership*

The limited commercial partnership has the same general definition as the unlimited commercial partnership; it has the same object of being a joining together of individuals in a joint activity for a financial profit.

In its structure and the personal liability of its members, the limited commercial partnership differs radically from the unlimited commercial partnership.

The limited commercial partnership has two kinds of partners that correspond to the two categories of liability it imposes. These are unlimited and limited partners.

The unlimited partners are jointly and also individually liable for all firm debts. On the other hand, the limited partners are responsible for firm debts

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40 *Code of Commerce*, art. 127 (Peru 1902).
41 *Code of Commerce*, art. 17 (Peru 1902).
42 *Boesen*, *op. cit. supra* note 20, at 150.
43 *Id.*, at 153.
44 *Code of Commerce*, art. 17, 124-158 (Peru 1902).
45 *Boesen*, *op. cit. supra* note 20, at 156.
only to the extent of their investment in, or contribution to, the firm. A limited partner in this kind of Peruvian partnership is therefore similar to the stockholders of a corporation. Like the corporate stockholders, he responds to firm creditors only to the extent of his firm investment.

The limited commercial partnership is operated by the unlimited partners. The entire management lies in their hands. As a result, the limited partners have no participation whatever in the active affairs of their firm. They cannot even act as agents. That is the price that Peruvian law exacts from them for not sharing to the fullest the hazards of the firm.

The requisites for establishing a Peruvian limited commercial partnership are the same as for establishing an unlimited commercial partnership.

If the name of any limited partner is included in the firm name, such partner has the same liability to third persons as the unlimited partner. This means that he would be liable to firm creditors to the full extent of his private means, without at the same time having more than his limited rights.

In all other general aspects, the Peruvian limited partnership is similar to the unlimited commercial partnership.

E. The Unlimited Civil Partnership

The main difference between the unlimited commercial partnership organized under the commercial code, and the civil partnership, organized under the civil code, is a greater latitude of objects permitted to the civil code partnership. The purpose of unlimited commercial partnerships is and must be exclusively monetary profit. The purpose of an unlimited civil partnership is, in practice, much broader and can consist of any object, financial or otherwise.

In nearly all other general aspects, aside from the difference in the personal liability of the partners, the unlimited commercial partnership and the civil partnership are in appearance and functioning very similar.

The chief characteristic of the unlimited civil partnership, in addition to the permitted non-financial character of its objective, is that the legal liability of each partner for firm debts is not limited, but is, in the absence of agreement, in proportion to his particular contribution. In other words, partners share firm debts in the same ratio as their individual investment bears to total firm investment of all partners.

The requirements for formation of an unlimited civil partnership are:

1. A formal written partnership contract setting forth:
   a. The partnership name.

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46 Id., at 157.
47 Code of Commerce, art. 155 (Peru 1902).
48 Boese, op. cit. supra note 20, at 160.
49 Id., at 161.
b. The partnership object.
c. The duration of the partnership.
d. The names of the partners and their respective domicile.
e. The domicile of the firm.
f. The capital in money, property, or personal services contributed or contracted to be contributed to the partnership by each partner.
g. The proportion in which the partners will participate in the profits or share the losses.

2. Recording the partnership in the civil register of the province where the firm is to have its domicile.\textsuperscript{50}

The principal right of each partner in an unlimited civil partnership is that each has the right to participate in firm profits, if any profits are derived from firm activity. However, as it is a civil partnership, it is permitted to have an object other than the making of monetary profits. In this event, the partners of course do not participate in any fruits from firm activity.

The recorded partnership contract may stipulate that the firm management be delegated to fewer than the total number of partners.\textsuperscript{51} In such case, the other partners cannot, barring fraud, oppose or revoke any action of the firm management. They have to abide by the decisions of the managing partners. In the absence of a provision for delegation of firm management to fewer than all the partners, each has the right to participation in the firm management.

In the unlimited civil partnership no partner may sell or otherwise transfer his interest in the firm without the express consent of all the other partners. Neither may he without firm consent substitute any third person in the performance of know-how duties delegated to him.\textsuperscript{52}

In case of contract provisions on the point, any losses from partnership operation will be shared as agreed in the partnership contract. However, if the recorded partnership contract is silent about the ratio of sharing partnership losses, they are shared by the partners in direct ratio to the amount of their individual partnership investment.\textsuperscript{53}

A partner's liability for firm debts, barring express agreement to the contrary setting a different ratio, is in proportion to his capital investment in the partnership.\textsuperscript{54}

F. The Limited Civil Partnership

The limited civil partnership is similar to a corporation in one respect, that is, the liability of each partner is limited. The great advantage of this type of

\textsuperscript{50} \textit{Civil Code}, art 1687-1689 (Peru 1902).
\textsuperscript{51} \textit{Civil Code}, art. 1687-1689 (Peru 1902).
\textsuperscript{52} \textit{Civil Code}, art. 1708 (Peru 1902).
\textsuperscript{53} \textit{Civil Code}, art. 1699 (Peru 1902).
\textsuperscript{54} \textit{Boesen}, \textit{op. cit. supra} note 20, at 166.
partnership is that each partner knows in advance exactly what his maximum personal liability for firm debts can be.\(^5\)

In order to have the protection against unknown or unlimited personal liability that the limited civil partnership confers upon its members, it must be organized with scrupulous compliance with all requisites of law governing its creation. These requirements are:

1. Formal written partnership contract by "escritura publica" setting forth:
   a. The partnership name. This name must be followed by and include the words, "Sociedad de Responsabilidad Limitada."
   b. An express statement that the partnership is to be a limited one.
   c. The duration of the partnership.
   d. The names of the partners and their respective domiciles.
   e. The domicile of the partnership.
   f. The capital in money, property, or services contributed to the partnership by each partner.
   g. The proportion in which the partners will participate in the profits and losses.\(^6\)

The rights and requirements of the limited civil partnership as to sharing in firm profits and participation in firm management are the same as in the unlimited civil partnership.

IV. Procedure for Corporations Organized under the Laws of Various Countries to Obtain Authorization to Do Business in Peru

Corporations organized under the laws of other countries may, at the discretion of the appropriate Peruvian authorities, obtain authorization to do business in Peru. It is not required that these foreign corporations have been organized in accordance with all the conditions required for creation of corporations under Peruvian law. It is sufficient that the foreign corporation be organized in conformity with the legal requirements of the country where it was formed.

In order for a foreign corporation to become authorized to do business in Peru, it must establish a local legal branch (Sucursal). The first step the foreign corporation must take in this connection is the appointment of an attorney-in-fact by resolution of the Board of Directors specifically empowering him to establish the proposed branch in Peru.\(^7\) This attorney-in-fact can be either Peruvian or a foreigner.

The following documents are required:

\(^5\) Id., at 167.
\(^6\) Civil Code, art. 1687, 1725, 1727 (Peru 1902).
\(^7\) DeLavalle, op. cit. supra note 32, at 22.
1. The attorney-in-fact’s power to act.
2. Certificate of incorporation of the foreign corporation.
3. Certificate of recordation of the certificate of incorporation in the country under those laws the corporation was formed.
5. Certified copy of resolution of Board of Directors authorizing domiciliation of the company in Peru.
6. Certified copy of resolution of the Board of Directors allocating a stated amount of capital to the branch to be established in Peru.
7. Certificate of present existence and good standing of the corporation in question, issued by the appropriate authorities of the country under whose laws it was organized.58

All of these documents, after translation into Spanish, must be properly authenticated and certified by the Peruvian Counsel. The Peruvian Counsel before issuing the corresponding certification shall require that the signature of the intervening notary public be previously authenticated by the County Clerk. A further legalization must be obtained from the Ministry of Foreign Affairs of Peru.59

The agent or attorney-in-fact must record his power of attorney in the Registro de Mandatarios of the department or departments where it is planned that the branch will do business.60 The attorney-in-fact has no authority whatever to act in Peru until his power has thus been recorded.

The corporate documents must be converted into public instruments; that is, they must be recorded in the records of a notary public. Following this, the franchise tax must be paid for which a receipt is attached to the documents.

The corporate documents must then be recorded in the commercial register of the province or provinces where the branch will do business.61 Upon the completion of this step the branch will be duly constituted.

Directors are not required to hold shares and there is no general requirement that they should be resident in Peru or of Peruvian nationality.

V. Organization Costs for Doing Business in Peru

Legal fees in connection with establishment of a business organization will depend upon the attorney and the complexity of the problem in each situation. Legal fees in Peru, however, are no higher than in the United States.62

58 Boesen, op. cit. supra note 20, at 223.
59 Id., at 223-224.
60 Id., at 224.
61 Id., at 226.
Upon organization, all noncorporate forms of business organizations are subject to a registry tax of 1% of their capital. Corporations are subject to this tax at a rate of 2%. At the option of the taxpayer, the registry tax may be paid only on the amount of capital actually paid in at the time of organization with later capital contributions taxed at the time of those contributions.

All forms of business organization are also subject, upon organization, to a municipal tax, a mercantile registry, and a stamp tax.

The construction of any industrial establishment must be preceded by a registration at the Bureau of Industries and Electricity of the Ministry of Development of Public Works. The fee for such registration is 30, 50, or 100 soles, depending on the capitalization of the establishment.

VI. PERUVIAN TAXATION

The normal business tax and the excess profits tax of Peru each amount to somewhat less than 20%. However, adding a 2% tax on income assessed for the benefit of the unemployed and income taxes paid separately on interest and rental income, the total income tax burden on business could range between 30 and 40%, without taking into account taxes applicable to dividends.

Individual income is taxed lightly in the lower brackets, but at 30% in brackets of over 100,000 soles.

The income tax law dates from July 26, 1934, and provides for tax assessments both by class of taxpayer and source of income. Employees pay taxes on salary, professionals on income from professional services, and businessmen on business income, each at different rates. All three types of taxpayers, however, pay taxes on uniform rates, and separately, on income in the form of rents, gains from the sale of real property, and interest from loans. Almost all individual income is subject to a complementary tax, and business income is subject to an excess profits tax.

The rates of tax on normal business profits are:

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<tr>
<th>NET INCOME (Soles)</th>
<th>RATE (Percent)</th>
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<td>First 10,000</td>
<td>7</td>
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* Supra note 16, at 12.
* Ibid.
* Supra note 62, at 139.
* For an excellent and extremely detailed study on Peruvian Taxation, see DeLavalle, op. cit. supra note 32, at 59-69.
* Id., at 61-62.
* Id., at 65.
* Id., at 63-66.
Next 20,000 or portion ............................................ 10
Next 20,000 or portion ............................................ 12
Next 20,000 or portion ............................................ 15
Next 30,000 or portion ............................................ 17
Excess over 100,000 ............................................. 20

The rates of tax on excess business profits are:71

<table>
<thead>
<tr>
<th>Excess Profits</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Soles)</td>
<td>(Percent)</td>
</tr>
<tr>
<td>First 50,000</td>
<td>10</td>
</tr>
<tr>
<td>Next 50,000</td>
<td>12</td>
</tr>
<tr>
<td>Next 900,000 or portion</td>
<td>15</td>
</tr>
<tr>
<td>Excess over 1,000,000</td>
<td>20</td>
</tr>
</tbody>
</table>

The rates of complementary progressive tax are:72

<table>
<thead>
<tr>
<th>Income</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Soles)</td>
<td>(Percent)</td>
</tr>
<tr>
<td>First 30,000</td>
<td>0</td>
</tr>
<tr>
<td>Next 5,000 or portion</td>
<td>7</td>
</tr>
<tr>
<td>Next 5,000 or portion</td>
<td>11</td>
</tr>
<tr>
<td>Next 10,000 or portion</td>
<td>13</td>
</tr>
<tr>
<td>Next 10,000 or portion</td>
<td>16</td>
</tr>
<tr>
<td>Next 10,000 or portion</td>
<td>20</td>
</tr>
<tr>
<td>Next 30,000 or portion</td>
<td>25</td>
</tr>
<tr>
<td>All income over 100,000</td>
<td>30</td>
</tr>
</tbody>
</table>

The rates of tax on profit from the sale of real property are:73

<table>
<thead>
<tr>
<th>Gain</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Soles)</td>
<td>(Percent)</td>
</tr>
<tr>
<td>Up to 10,000</td>
<td>7</td>
</tr>
<tr>
<td>10,001-30,000</td>
<td>9</td>
</tr>
<tr>
<td>30,001-50,000</td>
<td>10</td>
</tr>
<tr>
<td>50,001-70,000</td>
<td>13</td>
</tr>
<tr>
<td>70,001-100,000</td>
<td>14</td>
</tr>
<tr>
<td>Over 100,000</td>
<td>15</td>
</tr>
</tbody>
</table>

The tax is paid by the vendor prior to the transfer or sale of the property.74

The above four tax categories are subject to numerous credits and deductions for various situations and reasons. Peru is presently offering “incentive

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71 Ibid.
72 Ibid.
73 Ibid., at 7.
74 If the vendor is in the business of selling realty, the tax does not apply. In such case, vendor pays income tax on business profits.
tax deductions" to stimulate—perhaps to force—immediate industrialization.75

Tax on salaries is assessed against all persons resident in Peru and persons temporarily in Peru, regardless of length of visit, if for business reasons. The income taxed is that received as salary for personal services rendered to individuals, institutions, businesses, companies of any type, government, municipalities, or any other entity; income from old-age pension, severance pay, or annuities; income from commissions, bonuses, and entertainment allowances.

There are numerous monthly exemptions and deductions.76

VII. THE PERUVIAN LABOR CONTRACT AND PERUVIAN LABOR LEGISLATION

The Peruvian Constitution gives the government a strong role in labor matters. While the Constitution guarantees individuals the right to engage in business and the right to work, it also gives the government authority to legislate over collective bargaining contracts and over such labor matters as minimum wages, maximum work hours, and safety and health requirements and standards. Legislative authority over labor subjects is lodged exclusively in the National Government. Strikes are regulated, and arbitration, once entered into, is compulsory.

Labor legislation has been molded to fit the social and economic evolution of the ethnic and cultural groups of the country. Accordingly, the pattern of legislation admits of distinctions in the labor provisions applicable to the indigenous Indian population engaged in share-cropping and other pursuits in the hinterland, domestic servants, homeworkers, and the laborers and salaried employees of businesses engaged in commerce, industry, or agriculture.77

Authority for distinct labor measures for salaried employees and laborers as well as among workers in the different regions of the country is found in the Constitution.78 Legislation, however, fails to give clear definitions for either type of worker. One early labor measure classifies most office workers and technicians as employees and excludes from the employee category a long list of workers. A 1941 decision of the Labor Court indicated that an employee's work is primarily intellectual and the laborer's work is primarily

75 Under the Peruvian Industrial Development Law, income taxes may be waived on 30 to 100% of an approved investments' profits, depending upon the location of the investment within the country. The duration of this concession is between 15 and 29 years, again depending on the investment's location, See Foreign Commerce Weekly, December 28, 1959, p. 10.
77 Supra note 62, at 105.
78 PERU CONST. art. 46.
physical or manual. However, the present-day pattern of legislation seems to
tend toward the elimination of these distinctions wherever feasible.

Employees and laborers in the large work centers are covered by an exten-
sive system of labor welfare and social security legislation. On the whole, labor
wages and benefits for workers of very small firms and farm workers in the
distant places are less extensive. Often, however, agricultural workers are
fed and housed by their employers.

Peruvian labor legislation imposes upon employers a number of obliga-
tions which vitally affect the cost of labor. For the salaried employee, these
are (1) 30 days' paid vacation a year, (2) 20 paid holidays per year, (3) sev-
erance pay of 1 month's salary for each year of service and the right to 3
months' notice of dismissal, (4) life insurance policy paid by employer in
face amount of one-third of 4 year's earnings of employee, (5) 30% salary aft-
er 30 years' service, (6) full pension after 35 years' of service or reduced an-
nuity after 30 years' service, (7) year-end bonus of from 25 to 100% of 1
month's salary, depending on length of service, (8) medical care and compen-
sation for occupational diseases and industrial accidents, and (9) medical
payments for ordinary illness and maternity benefits.

For the manual or wage worker the employer's obligations consist of (1)
15 days' paid vacation a year, (2) 1 day's holiday per year, but 1 day of extra
pay per week if worker works 6 consecutive days per week, (3) 7 days' sever-
ance pay for each year of service if employed by firms capitalized at less than
500,000 soles, and 15 days' pay if employed by firms of larger capitalization,
(4) year-end bonus of from 3 days' to 2 weeks' pay, depending on years of serv-
ice, (5) medical care and compensation for professional diseases and indus-
trial accidents, (6) old-age pension and invalidity pension of about 40% of
last 5 years; average earnings, and (7) medical care and compensation for
time lost from work for ordinary illness.

The principal labor provisions affecting most workers cover maritime
workers, workers in mines and in petroleum operations, and, in general, all
workers employed by businesses engaged in agriculture, commerce, and in-
dustry.

The Constitution and the Code of Commerce provide that the laws of the
country protect and obligate equally all inhabitants in Peru, therefore, the
labor laws would be compulsory on all foreign persons working in Peru.

In general, foreigners may work in Peru. However, not less than 80% of all
individuals employed by an enterprise must be Peruvian nationals, and at
least 80% of the firms' payrolls must be paid to such nationals.\textsuperscript{83} Although this requirement is enforced rigidly, exceptions may be made upon a showing that Peruvian nationals are not available to perform specialized technical work required for a particular enterprise.

The individual labor contract may be for a fixed or indefinite period. No labor contract may derogate from the rights and privileges granted the worker by Peruvian laws. All individual labor contracts must be approved by the Ministry of Labor, and may not be made for a period longer than six years for professional and technical work and three years for other work. The most common contracts used in Peru are for an indefinite period and to this type of contract attach the greatest number of the labor benefits provided by law.\textsuperscript{84}

Work is legally limited to 8 hours daily and 48 hours weekly for both employees and laborers. In practice, however, employees usually are required to work only 7 hours daily. During the warm weather months of January, February, and March, employees are required to work only 6½ hours per day in Lima and all costal cities.\textsuperscript{85}

Wages may be fixed by individual or collective contracts. In any case, wages must be commensurate with the value of the work performed. However, under constitutional authority, the government has fixed wages for certain industries and from time to time has declared general cost-of-living increases for both employees and laborers. In addition to the wages paid, fringe benefits accrue to the worker in the form of a profit-sharing bonus, social insurance, and social security.\textsuperscript{86}

All establishments employing more than 50 laborers and located more than 1 kilometer (0.6 miles) from the nearest city must provide living quarters for laborers and their families, a primary school, a first-aid room, and, if located more than 10 kilometers (6.2 miles) away from the city, must have a doctor in attendance.\textsuperscript{87}

VIII. The Peruvian Contract and Its Relation to United States Contract Law

The definition of a contract is the same under both the United States and Peruvian law. Both define a contract as an agreement between two or more persons to do or not to do a certain thing. Under both, this agreement is voluntary, but once formed, its performance becomes compulsory.

\textsuperscript{83} Law No. 7507 of April 8, 1932. Foreigners whose children are born in Peru are considered nationals for the purpose of this rule. Foreign directors, proprietors, or stockholders are not taken into account in the 80% computation (Supreme Decree of August 31, 1933, art. 3).
\textsuperscript{84} Supra note 16, at 23.
\textsuperscript{85} DELAVALLE, op. cit. supra note 32, at 72.
\textsuperscript{86} Id., at 73-74.
\textsuperscript{87} Id., at 74.
The contract law of the two countries is amazingly similar, and, this article will not discuss those similarities. However, there will be an investigation into the areas of contract law where the two do differ.

In the United States, an offer made without any mention of a time limit for acceptance can be accepted within a "reasonable time." In contrast, Peruvian law does not permit the offeror to withdraw his offer at his pleasure before its acceptance. He can withdraw it at his pleasure only before it has reached the knowledge of the offeree. Once communicated to the offeree, the offer becomes subject to certain rules of law that measure its duration and determine its effects.

Peruvian law differs from United States law in regard to the place where a contract is made. Under the Peruvian rule, the place where the offer was made is the place where the contract is made. The law of this place determines the right and duties of the contracting parties. However, under the United States rule, the place where the contract is made is the place where the last act occurred that was necessary for the formation of the contract.

According to Peruvian law, a contract whose object is not possible of performance of the agreed consideration prevents a contract from coming into existence. In contrast, under American law, a contract for a consideration impossible of being performed is theoretically not void. It is permitted. But practically speaking, it is not enforceable because the damages from the non-performance of an impossible object could not be determined.

Under United States law, a person can act in behalf of an undisclosed principal without revealing that he is so acting. Such person, consequently, can enter into a contract with other persons in behalf of an undisclosed principal. However, Peruvian law does not permit the making of contracts in behalf of undisclosed principals. Such principals do not acquire any rights under such contract. Only the agent, or, in other words, the one who personally entered into the contract acquires rights and assumes duties thereunder.

The United States rule under multiple party contracts is that, when a group enters into a contract with another group or with an individual, there arises the presumption, in the absence of contrary intention, that such group has jointly assumed the obligation of performing the contract and that each co-debtor has agreed to respond to the creditor for the entire consideration if his co-debtors do not perform their part. The Peruvian presumption is that a multiple party contract imposes only a pro rata responsibility on each co-

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88 BOESEN, op. cit. supra note 20, at 6.
89 Id., at 4.
90 Id., at 13.
91 Id., at 15-16.
92 Id., at 20-21.
obligor for the consideration. This presumption governs in the absence of affirmative intention in the contract to create a joint responsibility.

Peruvian and American law differ from each other as to the effects from the creditor's interrupting the running of the Statute of Limitations. In Peru, a creditor can interrupt the running of the Statute against all the co-debtors by interrupting it only against one. In the United States, the running of the Statute of Limitations against all joint debtors cannot be interrupted by action against only one of them.

Peruvian law preserves the liability of the deceased co-debtor and imposes it upon his property. The American rule is different. According to it, death of a joint-debtor terminates his liability.

Both Peruvian and American law recognize conditional obligations and have exactly the same concept of them. However, the two differ when it comes to the obligee's rights before the happening of the event specified as a condition precedent. American law does not give the obligee any active rights before the happening of the event made a condition precedent, and holds that everything stipulated in the contract remains in suspense while the event on which the necessity for performance depends does not occur. The parties have to await this event before being able to assert active rights. Peruvian law is completely opposite. It authorizes an obligee to take precautionary means to protect his dormant contract right even though the obligor's performance of the obligee's right depends on an event that is still future or uncertain.

The Peruvian rule as to what constitutes performance of a contract is much more severe and inflexible than the American. Peruvian law requires that contract performance comply in every detail with the consideration stipulated. If there is any discrepancy as to time, place, or manner agreed on, or in respect to the entirety of the consideration, however small it be, the obligee does not need to accept such imperfect performance and can peremptorily reject it. American law does not require a performance that is 100% perfect in order for a contract to be enforceable by the obligor.

IX. LICENSING AND EXCHANGE CONTROLS IN PERU

Peru's trade policy is designed chiefly to stimulate national economic development and regional economic integration, to raise revenue for operating the government, and to encourage international trade. Its trade policy is conditioned by its dependence on foreign markets as a producer of primary commodities in large quantities such as sugar, cotton, coffee, fish meal, lead and
zinc. The government depends upon customs receipts for both recurrent and development funds.

Peruvian trade policy objectives are achieved mainly by regulating the level of customs duties and charges rather than by applying exchange restrictions or trade quotas.

The levels of tariff rates are established by several domestic laws, including the Organic Law of the Functional Budget and the Industrial Development Law. The first provides for the generally applied rates of duty. For some items the rates are high in order to discourage the importation of luxury goods and those competing with similar goods produced by domestic industries. For other items, the rates are comparatively low, as in the case of equipment essential to Peru’s economic development and some basic food items. To foster economic growth, the development law specifies that import duties and some additional taxes will be waived on new machinery or equipment not competing with those made in Peru and for use by firms engaged principally in the manufacture of basic articles. Special industry development laws also provide tariff concessions as a means of encouraging development.

Also, as pointed out, Peru fosters its trade objectives by participating in international agreements, such as the General Agreement on Tariffs and Trade (GATT), the Latin American Free Trade Association (LAFTA), and the Peru-Chile bilateral commercial agreement.

A. Peru’s Import Controls

The Peruvian customs schedule of duties and charges on imports as generally applied consists of two columns, one which indicates the specific duty, usually in gold soles per unit of weight or measure of the imported item, and the other which indicates the ad valorem additional duty.\textsuperscript{97} There is a further import charge, called Maritime Freight tax, of 4\% of the freight charge.\textsuperscript{98}

The specific duties\textsuperscript{99} range from 0.10 soles or less to upwards of 150 soles, with many rates within a range of from 1 to 10 soles per kilogram.\textsuperscript{100} The ad valorem additional duty is most frequently 30\%; however, there are rates of 20, 40, 50, or 60\% and occasionally 150\% and above.\textsuperscript{101} Tariff reductions or exemptions are granted to some semi-finished materials, machines, equipment, tools, vehicles, and other articles of fundamental importance for the development of agriculture, mining, or industry provided they are manufactured mainly with the use of Peruvian natural resources.

\textsuperscript{97} U.S. DEP’T OF COMMERCE, FOREIGN TRADE REGULATIONS OF PERU 1 (1964).
\textsuperscript{98} RODRIGUEZ, \textit{op. cit. supra} note 1, at 59.
\textsuperscript{99} The classification of duties in the Peruvian schedule is according to the Brussels Tariff Nomenclature, 1955, as modified under the LAFTA agreement for its members.
\textsuperscript{100} WORLD TRADE INFORMATION SERV., IMPORT TARIFF SYSTEM OF PERU 1 (part 2, no. 56-25, March 1956).
\textsuperscript{101} Ibid.
Exempted from the Maritime Freight tax are a few items in the following
general commodity groupings: Live animals, meats, cereals, milling products,
organic chemical, pharmaceuticals, printing industry products, coinage and
precious stones, and metals and their products.

Specific duties are assessed per unit of weight or other measure of quan-
tity. Gross weight is the weight of the goods together with that of the outer
and inner containers. Legal weight is the weight of the goods together with
that of the inner container or wrapping. Net weight is the weight of the goods
without package or wrapping.

Ad valorem duties are computed on the c.i.f. (cost, insurance, and freight)
determined arbitrarily by adding 20% of the f.o.b. value port of embar-
kation to the f.o.b. price.

A stamp tax of 4.5% on the retail price is collected on all business trans-
actions. An excise tax of 8% is imposed on domestic beer and one of 4% on cer-
tain other domestic goods including wines and liquors. A consumption tax
on automobiles ranges from 7% ad valorem on automobiles valued at less than
$1,500 to 90% on automobiles exceeding $4,000 in value. There are various
additional charges on a limited number of items.

Shipping documents include the commercial invoice, consular invoice,
bill of lading or carrier’s air waybill, and special authorizations. Documents
must be presented for legalization or certification at least 24 hours before
sailing or mailing to avoid fines against the importer upon arrival of the goods
in Peru.

B. Peru’s Export Controls

No restrictions affect proceeds derived from exports, and exporters may dis-
pose of exchange earnings in the free market.

Export licenses are not generally required. However, exporters are re-
quired to submit a sworn declaration of the value of their export which is
used as the basis for the assessment of export duties.

Exports of lead and zinc in ores, concentrates, or metals to the United
States and Canada require authorization from the Bureau of Commerce,
Ministry of Finance and Commerce. The purpose of this regulation is to per-
mit the Peruvian government to exercise control over lead and zinc ship-
ments with a view to conforming to the United States quota limitation on
imports of these metals.

102 Supra note 97, at 2.
103 Ibid.
104 World Trade Information Serv., Licensing & Exchange Controls: Peru 3 (part 2,
no. 56-49, May 1956).
105 Supra note 97, at 2.
106 In 1964 Peru imported 2,221,560 metric tons of merchandise valued at $579,554,000,
and exported 9,723,423 metric tons of merchandise valued at $666,989,000.
107 Supra note 97, at 7.
108 Id., at 8.
Similarly, exports of sugar require approval from the Bureau of Commerce in the Ministry of Finance and Commerce.\textsuperscript{109} The government thereby exercises control over sugar shipments in conformity with Peru's commitments under the International Sugar Agreement.

The Peruvian government has also established government monopolies that control the exportation of certain products. Domestic marketing and exports of coca are controlled by the Coca Monopoly (Estanque de la Coca), guano by the Guano Company (Compania Administradora del Guano), rubber by the Agricultural Development Bank (Banco de Fomento Agropecuario del Peru), and rice by the Bank for Deposits and Consignments (Caja de Depositos y Consignaciones).\textsuperscript{110}

C. Peru's Exchange Controls

Since 1948 Peru has been relatively free of exchange controls. The official parity rate has been abolished and a free market rate of exchange established.\textsuperscript{111} There are two fluctuating rates of exchange—that arising from exports, designated "certificate exchange," and that arising from all other operations, commonly referred to as free or draft exchange.

Free (draft) exchange may be bought or sold without restriction, whereas certificate exchange is permitted primarily for the payment of imports.

All inward and most outward capital movements may be effected without control in the free or draft market.

X. PATENTS AND TRADEMARKS IN PERU

Peruvian patents of invention or discovery are granted by the Ministry of Development and Public Works. The patent privilege is good for 10 years from the date the patent is issued. One extension of 5 years may be granted but only under special circumstances.\textsuperscript{112}

Inventions patented in other countries are eligible for patent if the invention is still undisclosed and not being worked.\textsuperscript{113} Information submitted in a patent application to the government is not considered a disclosure.

Patents may be granted for: (1) New industrial products and (2) new means or new applications of known means to obtain a result or industrial product.\textsuperscript{114}

Patents will not be granted for: (1) Pharmaceutical preparations of any kind, (2) credit or income schemes of any kind, and (3) processes for estab-

\textsuperscript{109} Delavalle, op. cit. supra note 32, at 67.
\textsuperscript{109} Ibid.
\textsuperscript{111} World Trade Information Serv., Licensing & Exchange Controls: Peru 2 (part 2, no. 56-49, May 1965).
\textsuperscript{112} Delavalle, op. cit. supra note 32, 127.
\textsuperscript{113} Ibid.
\textsuperscript{114} Ibid.
lishing known methods of improving an industry already in free use within or without Peru.\textsuperscript{115}

Patent applications must be in Spanish; and in the numbers, weights, and measures used in Peru. Registration fees are nominal.

Patent rights lapse if the applicant (1) has not paid the required patent fees, (2) has not worked the patent in Peru within 2 years or other special period specified from the date the patent was issued, or (3) has introduced into the country the same products of invention, except for models brought into the country prior to application and with prior government permission.\textsuperscript{116}

To obtain a patent through an agent or attorney in Peru, powers of attorney legalized by a Peruvian counsel are required.

Trademarks and trade names are registered with the Ministry of Development and Public Works. A law of December 19, 1892, and its amendments control the registration of trademarks and trade names. Perú's adherence to the general Inter-American Convention for Trademark and Commercial Protection signed at Washington in 1929 ensures national treatment, under the laws of Perú, to United States owners.\textsuperscript{117}

Trade names used by individuals or firms conducting business are considered industrial property and may be registered. Ordinarily, the exclusive right to the use of a trade name terminates on the cessation of activity of the business.

Trademark registration may be made for "articles designated in writing in some special forms such as emblems, monograms, pictures or designs; seals, vignettes, embossing; letters or numbers in some special form; containers, covers, wrappers; and in general any sign or device used to distinguish the product of one factory or business from others."\textsuperscript{118}

The trademark first registered has priority, and if the applications are presented simultaneously the applicant who shows the longest use has priority. If both applicants show the same period of use, priority is given to the domestic rather than the foreign applicant; and if both applicants are either domestic or foreign, priority goes to the one who first established the particular industry; and if it is a new business both applicants must change their trademarks.\textsuperscript{119}

The trademark registration is good for 10 years and may be renewed for another 10 years.\textsuperscript{120}

\textsuperscript{115} Ibid.
\textsuperscript{116} Supra note 62, at 140.
\textsuperscript{117} Moller, Peruvian Trademark Law, 45 Trademark Rep. 264 (1955).
\textsuperscript{118} Law of December 19, 1892, art. 1.
\textsuperscript{119} Supra note 62, at 141.
\textsuperscript{120} Ibid.
XI. ENFORCEMENT OF FOREIGN JUDGMENTS IN PERU

No treaty between Peru and the United States governs the reciprocal enforcement of judgments rendered in the respective courts of each country. By Peruvian law, however, foreign judgments have the same force in Peru as is given to Peruvian judgments in the country in question.\textsuperscript{121}

However, a foreign judgment will not be enforced if it decides matters pertaining to: (1) Civil status, capacity, or family relations of Peruvians or foreigners domiciled in Peru, (2) realty in Peru, (3) Peruvian flag ships, (4) civil actions based on infractions occurring in Peru, and (5) inheritances affecting Peruvians or foreigners domiciled in Peru, when Peruvians or foreigners domiciled in Peru or the State have rights to the inheritance.\textsuperscript{122}

Moreover, a foreign judgment will be enforced only (1) if it decides matters over which Peruvian courts have no jurisdiction, (2) if it does not bring results contrary to morals, customs, or Peruvian prohibitory laws, (3) if it is final and unappealable in the State where rendered, and (4) if the defendant in the particular proceeding was summoned in accordance with the laws of the State where the judgment was rendered.\textsuperscript{123}

XII. CONCLUSION

From the foregoing it can be seen that there are great opportunities for industries in Peru. The laws for establishing or conducting business are not strict, but very liberal. Surely, there are problems in Peru, but President Belaunde has initiated progressive reforms that will aid the country itself and its people, and also any foreign business determined to establish in Peru.

Peru's two most basic problems are to bring about economic and social betterment for the great mass of the population and to integrate the largely illiterate Indian portion of the population which lives primarily by subsistence, agriculture, and barter. Pressures of overpopulation and pressures on the small amount of workable land in the Andean Sierras, mass migration to the cities, and the accompanying growth of slums have intensified these problems.

In an attempt to find solutions to these problems, President Belaunde has set-up three basic objectives for his government. They are (1) to maintain Peru's sovereignty and integrity while strengthening inter-American cooperation, (2) to promote social and economic reform and development along the line of the Alliance for Progress and thus afford a higher standard of living for the people and accelerate the integration of the largely unassimilated Indian

\textsuperscript{121} Ibid.
\textsuperscript{122} Ibid.
\textsuperscript{123} Ibid.
population, and (3) to open the jungle areas to the east of the country and construct an international highway along the eastern foothills of the Andeas.

In light of the development efforts being made by the Peruvian Government, an encouraging and lucrative business climate is becoming available to business-interests in Peru.

J.M.F.