This country-specific Q&A provides an overview of environment laws and regulations applicable in Peru.

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1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

The environmental legal framework in Peru includes the 1993 Political Constitution, as well as environmental protection laws and regulations.

The Peruvian Constitution includes the fundamental right to enjoy a balanced and adequate environment for the development of one’s life. Likewise, it establishes that the State determines the national environmental policy, promotes the sustainable use of its natural resources, the conservation of biological diversity and protected natural areas, as well as the sustainable development of the Amazonia.

The main environmental laws in Peru are the following:

- The General Environmental Law (Law 28611): Establishes the legal regulatory framework for environmental management in Peru, as well as the basic principles and standards to ensure the effective exercise of the right to a healthy, balanced, and adequate environment for full development of life, as well as the fulfillment of the duty to protect the environment.
- Organic Law for the sustainable use of natural resources (Law 26821): Regulates the regime for the sustainable use of natural resources, establishing its conditions and the modalities of granting to individuals.
- Law on the conservation and sustainable use of biological diversity (Law 26839): Regulates the conservation of biological diversity and the sustainable use of its components.
- The Environmental Management National System Framework Law (Law 28245): Regulates the functions and attributions of public entities on environmental matters for the implementation of the National Environmental Policy.
- The Environmental Impact Assessment National System Law (Law 27446): Regulates the operation of National Environmental Impact Assessment National System (SEIA by its acronym in Spanish) within which the environmental assessment of investment projects is carried out, as well as State policies, plans and programs that can generate negative impacts on the environment.
- The Environmental Assessment and Enforcement National System Law (Law 29325): Regulates the operation of the Environmental Evaluation and Enforcement National System (SINEFA by its acronym in Spanish), which aims to ensure compliance with environmental legislation, as well as supervise and guarantee that the functions of evaluation, supervision, inspection, control and sanctioning attributions in environmental matters, in charge of the various State entities, are carried out in an independent, impartial, agile and efficient manner.
- Water Resources Law (Law 29338): Regulates the use and management of water resources that comprise continental water: surface and underground, and the assets associated with it; likewise, the action of the State and individuals in said management.
- Forestry and Wildlife Law (Law 29763): Establishes the regulatory framework to promote the conservation, protection, increase and sustainable use of the forest and wildlife heritage within the national territory.
- Natural Protected Areas Law (Law 26834): Regulates the management and conservation of protected natural areas and their buffer zones.
- Framework Law on Climate Change (Law 30754): Establishes principles, approaches, and general provisions for the execution of public policies related to the adaptation and mitigation of climate change, in order to comply with the international commitments assumed by the State before the United...
Nations Framework Convention on Climate Change

- The Solid Waste Management Law (Legislative Decree 1278): Establishes the liability regime and obligations applicable to solid waste generators, to Solid Waste Operating Companies (“Empresas Operadoras de Residuos Sólidos” EO-RS for its acronym in Spanish), as well as the attributions of the authorities that grant permits for the development of activities and implementation of infrastructure related to solid waste management.
- Environmental quality standards applicable to air (Supreme Decree 003-2017-MINAM), noise (Supreme Decree 085-2003-PCM), water (Supreme Decree 004-2017-MINAM) and soil (Supreme Decree 011-2017-MINAM), which are a mandatory reference for the design of legal regulations and public policies, as well as for the design and application of environmental management instruments (e.g., environmental impact assessments, closure plans, etc.).

In addition, there are a series of environmental regulations exclusively applicable to different economic activities such as mining, hydrocarbons, electricity, agriculture, transportation, etc., which establish specific environmental obligations and standards based on the potential damages that such activities may cause to the environment.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

The main environmental regulatory authorities in Peru are the following:

- Ministry of the Environment (MINAN by its acronym in Spanish): It is the governing body of the National Environmental Management System, which develops, directs, supervises and executes the National Environmental Policy. It fulfills the function of promoting the conservation and sustainable use of natural resources, biological diversity and protected natural areas and establishes environmental regulations of national scope.
- The National Environmental Certification Service for Sustainable Investments (SENACE by its acronym in Spanish): SENACE is a specialized technical governmental agency, dependent of the MINAM, in charge of reviewing, which is responsible for reviewing and approving the detailed Environmental Impact Assessments within the framework of the SEIA for large investment projects of the mining, energy, transport sectors, among others.
- Environmental Assessment and Enforcement Agency (OEFA by its acronym in Spanish): OEFA is a specialized technical governmental agency, dependent of MINAM, responsible for enforcing, overseeing, controlling, and sanctioning on environmental matters, as well as applying incentives for compliance with environmental regulations. OEFA is the governing body of SINEFA.
- National Water Authority (ANA by its acronym in Spanish): As the governing body and technical-regulatory authority of the National Management System of Water Resources, the ANA is responsible for exercising exclusive jurisdiction over natural water resources; and managing, monitoring, controlling and regulating the industry aimed to ensure the preservation and conservation of natural water sources, natural assets associated with such sources and hydraulic infrastructure. The ANA grants permits for the use of water collected from natural sources (surface or underground), approves authorizations for the dumping of wastewater, among other permits, and has sanctioning and enforcement attributions.
- The National Service for Forest and Wildlife (SERFOR by its acronym in Spanish): SERFOR is a specialized technical governmental agency, dependent of the Ministry of Agriculture, in charge of regulating forest and wildlife matters and proposing policies, strategies, plans and other instruments to promote the sustainable use of forest and wildlife resources. SERFOR is the entity in charge of granting several permits to perform forest and non-forest activities, such as forest clearing activities, among others. It is the governing body of the National Forest and Wildlife Management System.
- National Service of Natural Areas Protected by the State (SERNANP by its acronym in Spanish): SERNANP is a governmental agency, dependent of MINAM, in charge of directing and establishing the technical and administrative criteria for the conservation of Natural Protected Areas and of safeguarding the maintenance of biological diversity. SERNANP is the governing body of the
National System of Natural Protected Areas.

- State ministries play an important regulatory role in environmental matters for their respective sectors.
- Regional and local governments, within the framework of political decentralization, are also regulatory authorities in certain environmental matters.

In the last decade, environmental control has been strengthened and has become more relevant, especially due to the role of the OEFA in the control it performs of compliance with the environmental obligations of the investment projects that are under its sphere of competence (mining, energy, agriculture, manufacturing, etc.).

In addition, there are other competent governmental agencies or authorities (e.g., ANA) on specific environmental matters such as water, forestry resources, and aquatic environment, among others that regulate and supervise environmental compliance and liability.

3. What is the framework for the environmental permitting regime in your jurisdiction?

Environmental permits are essential for the development of investment projects. In Peru, the main environmental permit is the environmental certification, through which the environmental authority certifies the environmental viability of an investment project prior to its execution.

Indeed, in accordance with the Law of the National Environmental Impact Assessment System (Law 27446) and its regulations (Supreme Decree 019-2009-MINAM), it is not legally possible to initiate the execution of projects and economic activities that may cause negative impacts on the environment, if the titleholder of the project does not previously obtain the corresponding environmental certification, that is, the approval of an environmental impact study in any of the following three categories:

a. Category I – Environmental Impact Statement ("Declaración de Impacto Ambiental" or DIA for its acronym in Spanish): Applicable to investment projects that could generate slight negative environmental impacts.

b. Category II – Semi-detailed Environmental Impact Assessment ("Estudio de Impacto Ambiental semidetallado" or EIA-sd for its acronym in Spanish): Applicable to investment projects that could generate moderate negative environmental impacts.

c. Category III – Detailed Environmental Impact Study ("Estudio de Impacto Ambiental detallado" EIA-d for its acronym in Spanish): Applicable to investment projects that could generate high negative environmental impacts.

To determine which category of EIA applies to an investment project subject to SEI titleholders must request the classification of its project before competent authority by submitting a preliminary environmental assessment ("Evaluación Ambiental Preliminar" or EVAP for its acronym in Spanish). However, for certain projects the applicable EIA category is predetermined by environmental regulations (e.g., an EIA-d is required for mining projects) and, therefore, it is not necessary to follow a classification procedure.

Finally, it is important to highlight that the environmental certification is independent of the other permits that are necessary to start the execution of the project. These permits cannot be granted by any authority if the project does not previously have the corresponding approved EIA.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Yes, as a general rule environmental permits can be transferred. In some cases, the transfer requires the approval of the authority, for example, in the case of water use licenses and wastewater discharge authorizations granted by ANA. In other cases, it is only required to notify the authority that the permit has been transferred, for example, in the case of EIAs whose transfer occurs automatically when the project or activity changes ownership.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

The decisions can be challenged before the competent authority to grant the permit, through a reconsideration resource based on evidence that the authority did not have at its disposal at the time of resolving, or before its hierarchical superior through an appeal. Likewise, it is possible to resort to the judiciary to challenge the decisions of the environmental authority in case the result of the appeal in the administrative jurisdiction is not favorable.
6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

The approval of environmental studies is required for the development of investment projects. The Environmental Impact Assessment National System Law (Law 27446) and its regulations (Supreme Decree 019-2009-MINAM) establish that projects that are subject to the SEIA must obtain an environmental certification (the approval of an EIA) before starting their operations.

The projects that are subject to the SEIA and must obtain the approval of an EIA are included in Annex II of Supreme Decree 019-2009-MINAM, which contains an extensive list of projects belonging to the different economic sectors (mining, hydrocarbons, electricity, agriculture, transport, etc.). The list was updated through Ministerial Resolution 157-2011-MINAM and its amendments.

The main elements of the environmental studies are: (i) the description of the project in all its phases, which must be presented at the feasibility level; (ii) the environmental baseline (physical, biological, and social) of the project area, as well as the determination of the direct and indirect area of influence of the project; (iii) the identification, evaluation, and prioritization of the environmental impacts of the project; (iv) the environmental management strategy, which includes the different plans to control and monitor the environmental impacts of the project; (v) the economic valuation of the environmental impacts of the project.

The environmental studies are approved after their technical and legal evaluation that takes place within the framework of a complex and extensive administrative procedure before the competent environmental authority (e.g., SENACE), which involves citizen participation through workshops and public hearings where the project and the content of the EIA is exposed to the population.

After the environmental impact study has been approved, as a general rule changes to the project will require that the competent environmental authority previously approve: (i) an amendment to the EIA, for changes that may generate significant environmental impacts; or a Technical Report (“Informe Técnico Sustentatorio” or ITS for its acronym in Spanish) for changes that may generate non-significant environmental impacts.

During the process of evaluation of environmental studies, interested third parties may request their incorporation as a “part” of the evaluation procedure of the EIA. If the environmental authority incorporates the interested third party as part of the procedure, the third party may appeal the results of the evaluation of the EIA.

In addition, once the EIA or its modifications have been approved, any third party may request its annulment through an administrative complaint on the grounds that the EIA has not complied with technical or legal requirements.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

In Peru, contamination of soil and groundwater constitutes an environmental damage. Environmental damages can generate civil, administrative, and criminal liability.

Title IV of the General Environmental Law regulates civil liability for environmental damages, establishing strict liability when the damage is derived from the use or development of an asset or activity that implies a risk or danger, and subjective liability in other cases.

Regarding administrative responsibility, the Environmental Assessment and Enforcement National System Law (Law 29325) infractions to environmental regulation is subject to strict liability. This rule deviates from the common administrative liability regime provided in the General Administrative Procedure Law (Supreme Decree 004-2019-JUS) which, instead, establishes subjective liability as a rule and, exceptionally, strict liability.

Finally, the Peruvian Criminal Code contains a section that typifies different types of environmental crimes and their corresponding sanctions (i.e. environmental contamination). Responsibility for environmental crimes is subjective and it generally require a severe breach of applicable laws and regulations and the production of damages that harm the environment. The sanctions for committing environmental crimes vary from two to ten years of imprisonment, depending on the specific crime.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive
obligation to provide any investigative reports to regulatory authorities?

Possible contamination in soil and groundwater is investigated in the following cases:

i. During the evaluation of the EIA of a new investment project that could potentially affect the soil or groundwater.
ii. When an environmental emergency occurs that affects soil and groundwater components (e.g., spills of polluting substances).

Additionally, possible soil contamination is investigated in the following cases:

i. When the project with an approved EIA must be adapted to new soil quality standards.
ii. When the project owner decides to terminate the project activities and must evaluate the effectiveness of the project closure measures.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

Only if the contaminated site discovered is associated with an environmental emergency, that is, when an unforeseen situation affect or may affect the quality of the soil. In these cases, the environmental authorities must be notified of the existence of soil contamination within 24 hours following the environmental emergency.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

Yes, the owner of the affected land has the right to file a civil claim seeking compensation for environmental damage when the previous owner caused the contamination, provided that the owner can reliably prove the environmental damage and that the agreement executed with the previous owner does not limit that possibility.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

The Solid Waste Management Law (Legislative Decree 1278) and its regulations (Supreme Decree 014-2017-MINAM) regulate the management and handling of solid waste (hazardous and non-hazardous), establishes the liability regime and obligations of generators of solid waste, of the companies authorized for the management of solid waste (the so called EO-RS), as well as the permits for the development of activities and implementation of infrastructure related to the management of solid waste.

Additionally, there are the following special regimes:

i. The Regulations for the Management of Solid Waste in the Agricultural Sector (Supreme Decree 016-2012-AG).
ii. The Regulation for the Management and Handling of Waste from Construction and Demolition Activities (Supreme Decree 003-2013-VIVIENDA).
iii. Technical Health Standard: Comprehensive management and management of solid waste in health establishments, medical support services and research centers (NTS 144-MINSA-2018-DIGESA)
iv. Law that regulates single-use plastic and disposable containers (Law 30884) and its regulations (Supreme Decree 006-2019-MINAM)
vii. Special Regime for the Management and Handling of End-of-Life Tires (Supreme Decree 024-2021-MINAM).

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

According to the Solid Waste Management Law (Legislative Decree 1278), the only case in which the producer of waste retains responsibility, after having transferred it to authorized third party (to an EO-RS) for transport, treatment, or disposal off-site, is when said producer contributes, through negligence or intent, to the generation of environmental damages.

In that specific case, the responsibility of the producer of waste extends during all activities of waste management, up to a period of twenty years counted
from the final disposal of the waste.

In all other cases, the responsibility of the producer of waste ends with the delivery of the waste to an authorized company (EO-RS) for waste management.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

In accordance with the Solid Waste Management Law (Legislative Decree 1278), manufacturers, importers, distributors, and traders must be actively involved, as appropriate, throughout the different stages of the life cycle of their products, for which they may take into measures that involve the efficient use of materials and eco-design of goods, the prevention of the generation of waste in its activities and participation in one or more solid waste management processes.

Likewise, in accordance with the Solid Waste Management Law, MINAM, through a Supreme Decree endorsed by the related sectors, approves the prioritized goods that are subject to this special solid waste management regime, as well as the objectives, goals, and deadlines for the implementation of management systems.

Currently, the Special Regime for the Management and Handling of Electrical and Electronic Equipment Waste, approved by Supreme Decree 009-2019-MINAM, establishes that producers of electronic devices have "extended responsibility" in the life cycle of their products and, therefore, have the following obligations related to the collection of waste related to electrical and electronic equipment (RAEE by its acronym in Spanish):

i. Receive RAEE, free of charge, within the national territory, from their clients or those that have been collected by distributors and marketers that participate in the value chain of electrical and electronic devices that they have placed on the market; notwithstanding that they can voluntarily receive, free of charge, REAE from other generators.

ii. Guarantee the facilities for the delivery of RAEE by its customers, through its own mechanisms or those associated with the distributors and marketers that are part of its distribution chain.

iii. Guarantee compliance with the collection goals stipulated in RAEE Management Plan and its financing.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

Law 29662 prohibited as of July 1, 2011, and throughout the Peruvian territory, the possession, processing, export, import, distribution, manufacture, and transfer, free of charge or for a fee, of all varieties of amphibole asbestos fibers, as well as the varieties of fibers or products that contain said compound.

Likewise, Law 29662 and its regulations (Supreme Decree 003-2013-HOUSING) regulate the use of chrysotile asbestos. In this sense, whoever needs to use this compound must comply with the accreditation for its use, its labeling, as well as process the corresponding authorization.

Finally, 29662 and its regulations, supplemented by Annex 6 of the Regulations for Management and Handling of Construction and Demolition Waste (Supreme Decree 003-2013-VIVIENDA), establish, in detail, all the measures that must be adopted for the safe removal of asbestos until its final disposal.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction?

Provide a short, high-level summary of the relevant provisions.

Legislative Decree 1126 approved the “Control Measures for Controlled Chemical Inputs and Products” and its regulations (Supreme Decree 044-2013-EF), contain control and inspection measures for chemical inputs and products that, directly or indirectly, may be used in the illicit manufacture of drugs. Among them, it regulates the procedure to obtain the authorization of entry and exit of controlled goods, the responsibilities of the users who use them, such as the obligation to label or label the chemical inputs and controlled products, the infractions, and sanctions for non-compliance with the established obligations, among other measures.

Regarding the list of chemical inputs, products and their by-products or derivatives, subject to control by Legislative Decree 1126, Supreme Decree 268-2019-EF contains an extensive list of chemical inputs and products that are subject to registration, control, and inspection in the national territory, including in the geographical areas subject to the special regime for the control of supervised goods, whatever their denomination, form or presentation.
16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

Through the Law for the Promotion of the Efficient Use of Energy, (Law 27345), and its regulations (Supreme Decree 053-2007-EM), the promotion of the efficient use of energy was declared of national interest to: (i) ensure the energy supply, protect the consumer, (ii) promote the competitiveness of the national economy and (iii) reduce the negative environmental impact of the use and consumption of energy. In this context, said regulatory framework establishes the attributions of the Ministry of Energy and Mines (MINEM by its acronym in Spanish) regarding the promotion of the efficient use of energy. Likewise, it develops the right to information of users about their energy consumption in relation to energy efficiency standards, for which it creates the obligation of producers and/or importers to carry out energy labeling, under sanction of the Commission of Repression of Unfair Competition of the National Institute of Antitrust Regulation Intellectual Property Protection (INDECOPI by its acronym in Spanish).

Additionally, Peru has Criteria for the Preparation of Energy Audits of the Public Sector, approved by Ministerial Resolution 186-2016-MEM, which seek to optimize energy consumption and thus contribute to the sustainable energy development of the country. The criteria have been developed in stages, in order to serve as a guide for the preparation of an energy audit, to be developed by the Energy Efficiency Consultant or by the Energy Services Company, who must be registered in an official registry authorized by the MINEM. For the private sector, it is not provided as an express obligation. However, the regulation does provide for a certain level of recognition for the actions they carry out to improve the energy efficiency of their processes. The aforementioned regulations have been supplemented by Supreme Decree 011-2016-EM, which approves provisions to promote the development of energy audits with the purpose of reducing energy consumption and the emission of greenhouse gases. In this sense, it regulates measures to promote energy audits, as well as the certification procedure for energy auditors.

In addition, in accordance with the Measures for the Efficient Use of Energy, approved by Supreme Decree 004-2016-EM, if public entities and/or companies need to acquire or replace energy equipment, they must do so using the most efficient technology available, in the market at the time of purchase. In line with the above, the Electricity Concessions Law (Decree Law 28544) establishes the possibility for distribution companies, public or private, to obtain recognition in the distribution tariff to develop technological innovation and energy efficiency projects, which must be proposed and approved by the Supervisory Agency of Energy and Mining Investment (OSINERGMIN by its acronym in Spanish).

All the above is within the framework of the National Energy Policy 2010-2040, approved with Supreme Decree 064-2010-EM, which targets large consumers of energy. The main objectives of this instrument are:

i. Achieve universal access to energy supply, integration with the region’s energy markets and self-sufficiency in energy production.
ii. Have a competitive energy supply, with efficiency in the production and use of energy.
iii. Diversify the energy matrix by developing energy resources rationally, with minimal environmental impact and low carbon emissions within a framework of sustainable development.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

With the aim of strengthening the institutional framework of the Peruvian State in relation to its international commitments related to the implementation of climate change mitigation and adaptation measures, in 2018 the Framework Law on Climate Change (Law 30754) was issued and in 2019, its regulations were approved (Supreme Decree 13-2019-MINAM). These standards establish the principles, approaches, and general provisions to coordinate, articulate, design, execute, report, monitor, evaluate and disseminate public policies for the management of adaptation and mitigation measures to climate change, in order to reduce the vulnerability of the environment. The country in the face of climate change, take advantage of the opportunities of low-carbon growth and comply with the commitments assumed by the State before the United Nations Framework Convention on Climate Change.

Currently, Peru does not have an emissions trading scheme. However, for several years it has had strategies, plans and mechanisms for the protection and conversation of forests. Indeed, in 2016 it approved the National Strategy on Forests and Climate Change through Supreme Decree 007-2016-MINAM and, since that same year, Peru has guidelines for the management...
and implementation of REDD+ actions.

In relation to the use of renewable energy, in 2008 Legislative Decree 1002 was approved to promote investment in electricity generation projects with the use of renewable energy, and in 2011 its regulations were approved (Supreme Decree 012-2011-EM). The aforementioned legislative decree and its regulations included incentives for the generation of renewable energies such as the preferential dispatch of the plants that use these resources for their generation, tax benefits related to the depreciation of infrastructure and the mechanism of auctions of renewable energy resources. There is a bill to further promote this special regime and, among other measures, include green hydrogen in said renewable energy promotional regime (Project Law 6953/2020-CR).

18. To what extent are environmental, social, and governance (ESG) issues a material consideration in your jurisdiction? Is ESG due diligence for transactions and ESG due diligence in supply chains becoming mandatory or more common? To what extent are companies obliged to report on ESG matters? Has COVID-19 had any impact in relation to companies’ approach to ESG in your jurisdiction?

ESG issues are common and of particular relevance to project finance or company acquisitions. Indeed, it is common for due diligence to cover environmental and social aspects, as well as corporate policies to manage those aspects, especially in the financing or acquisition of projects related to the exploration or exploitation of natural resources.

 Likewise, in accordance with Resolution 033-2015-SMV-01 and Resolution 018-2020-SMV-02, the issuing companies with securities registered in the Public Registry of the Securities Market (except those whose securities are only registered in the Alternative Securities Market), must prepare their Corporate Sustainability Report as part of the Annual Report that they submit to the Superintendency of the Stock Market (SMV for its acronym in Spanish). This report is intended to reveal to the market information on the actions and standards implemented by the issuers in relation to the impact of their operations on the environment and social development.

Finally, the Regulation for Social and Environmental Risk Management (Resolution SBS 1928-2015), obliges certain companies in the Financial System (e.g., banks and investment banks) to define and implement a general policy for social and environmental risk management, and to measure the environmental and social risk profile of its clients for financing operations that exceed certain amounts indicated by said regulation.

19. Does your jurisdiction have an overarching “net zero” or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

Peru has not assumed the commitment to reach “net zero”. However, in December 2020, the High-Level Commission on Climate Change updated the NDC, increasing it to 40%.

In June 2021, the “National Plan for Adaptation to Climate Change by 2050” was approved. This plan has the following objectives:

   i. Contribute to the effective implementation of Climate Change Adaptation Measures
   ii. Contribute to updating the “National Strategy on Climate Change” approved in 2015.
   iii. Contribute to implement the Framework Law on Climate Change (Law 30754) and its regulations (Supreme Decree 013-2019-MINAM)
   iv. Contribute to the implementation of the NDCs, as well as their future updates.

In addition, in July 2021 the “National Environmental Policy to 2030” was approved, which has, among its main objectives, the reduction of the levels of deforestation and degradation of ecosystems, as well as the adaptation to the effects of climate change in the country.

Although this evidence the progress made by the Peruvian State to fulfill its international commitments on climate change, it is at the same time insufficient. Indeed, the National Inventory of Greenhouse Gases has not been updated since 2016. Likewise, the system for measuring, reporting and verifying the effectiveness of actions to reduce greenhouse gases has not been fully implemented.

20. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as “green”, “sustainable” or similar terms?
There is no regulation that establishes in what cases certain products can be classified as ecological, sustainable, or similar.

Regarding companies, within the framework of the legal regime of incentives in the field of environmental enforcement, which exists in Peru to promote business practices that prevent or reduce negative impacts on the environment, the OEFA grants the following recognitions:

i. Incorporation in the Ranking of Environmental Excellence (REAL for its acronym in Spanish)
ii. Annual recognition called “Qumir Rapi”.
iii. “Qumir Kawasy” annual seal as the highest distinction to be awarded by the OEFA.

Likewise, the ANA issues the so-called “Blue Certificate” that recognizes the good practices applied by companies in the efficient use of water and for the social responsibility applied in the management of water resources in the basins where their projects are located.

Finally, recently enacted Law 31072 and its recent regulations (Supreme Decree 004-2021-PRODUCE) allows legal entities, of private law, constituted the General Corporation Law (Law 26887), to acquire the category of Collective Benefit and Interest Company, as from their registration in the Registry of Legal Entities, voluntarily committing to generate a positive impact and/or reduce a negative impact, integrating to their economic activity the purpose of achieving the social or environmental benefit chosen by it. To maintain said category, companies must fulfill their commitment to generate positive impacts on society or the environment and, additionally, they must commission an independent third party to prepare an “Annual Management Report”, the purpose of which is to demonstrate that they have generated positive impacts on society or the environment in compliance with their voluntarily assumed commitments.

21. Have there been any notable court judgments in relation to climate change or ESG-related litigation over the past three years?

No.

22. In light of the commitments of your jurisdiction that were made at or surrounding COP26, do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

At COP26, Peru presented the main measures it has implemented as part of its strategy against climate change. Among them, the installation of the High-Level Commission on Climate Change, the updating of the NDC; the Platform of Indigenous Peoples to face Climate Change; the National Forest Conservation Program for Climate Change Mitigation, which applies Conditional Direct Transfers; and the signing of the Bilateral Agreement with the Swiss government to implement article 6 of the Paris Agreement.

In this context, the Vice Minister of Strategic Development of Natural Resources of MINAM announced that the country will approve the Declaration of Climate Emergency. Along the same lines, the vice minister reiterated the State’s commitment to sustainably conserve and protect forests and terrestrial ecosystems and reduce polluting emissions by 2030.

However, we do not foresee any substantial legislative changes given that Peru already has a legal framework for the implementation of public policies on climate change (the Framework Law on Climate Change and its regulations). Rather, we anticipate that efforts in the coming months and years will focus on updating the National Inventory of Greenhouse Gases for 2016, on preparing and approving the “National Strategy for Climate Change to 2050” and continuing with the implementation of the system for monitoring, reporting and verification of greenhouse gas reduction measures.

23. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

In Peruvian environmental legislation, administrative responsibility for environmental infractions (including environmental pollution) always falls on the person who has committed an administrative infraction.

Therefore, if the environmental infraction is committed by a company, acting through its representatives (individuals), the administrative responsibility will be limited to the company and will not extend to its partners, shareholders, representatives and/or entities that have lent money to the company.
Similarly, civil liability is limited to the company that has generated the environmental pollution.

Finally, criminal liability shall apply to the members within the company’s business structure (including directors and managers) that had decision-making power over environmental matters at the time in which the infringement was committed. That is, the decision-making officers of the companies are the ones exposed to criminal investigation, prosecution and, eventually, liability if there is a grave infraction that is typified as a crime.

24. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

In Peru, the concept of “environmental liability” designates the pollution generated by the owner of a project that has completed its activities and has withdrawn from the site without having remedied the pollution. The identification and qualification of an environmental liability is carried out by the competent environmental authority.

In this sense, the environmental responsibility falls on the person who generated the environmental liability, unless such responsibility has been contractually transferred to the new owner of the asset and/or project.

Therefore, a buyer will assume responsibility for an environmental liability in the purchase of an asset/shares, provided that this has been expressly agreed with the seller.

Correlatively, the seller that has generated the environmental liability always maintains the responsibility in cases of sale of assets/shares, unless the agreement with the buyer has expressly established that it transfers the responsibility for the environmental liability.

25. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

In addition to the duty to act in good faith, applicable to all types of negotiations or transactions, environmental regulations do not establish an specific legal obligation to disclose environmental information in the framework of private transactions. To cover this regulatory gap, it is common for interested parties to perform environmental due diligence.

26. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

In Peru there is no limitation for contracting insurance that covers environmental risks. However, according to the list of insurance offered in Peru by the Superintendence of Banking and Insurance (SBS for its acronym in Spanish), no specific environmental liability insurance is offered. For this reason, the coverage of environmental risks is offered in Peru by the various local insurance companies, through an additional clause to the civil liability insurance or as a civil liability insurance for pollution.

Indeed, there are two types of insurance that are commonly offered in the Peruvian market: (i) environmental liability insurance, which provides coverage for damage caused to the environment and the costs of its restoration; and (ii) civil liability insurance for pollution, which provides coverage for damage caused to goods or people caused by pollution.

It is important to mention that, although to date there is no general regulation that requires companies to contract coverage against environmental risks in order to allow their operation, there are special regulations that require companies to contract an insurance policy that covers the damages caused by possible pollution derived from their activities (e.g., for the transportation of hazardous materials and solid waste).

27. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

In Peru, the National System of Environmental Information (SINIA for its acronym in Spanish) allows free access to environmental information generated by public and private entities.

The purpose of SINIA is to make available to the public information (legislation, public policies, statistics, etc.) on different environmental components such as water,
air, soil, biodiversity, solid waste, etc.

Likewise, the competent authorities in environmental matters publish on their web pages, among other documents, the regulations, guidelines, resolutions and permits that they issue in the exercise of their functions. For example, SENACE has implemented a platform so that anyone can access the content of the environmental studies it approves (https://www.senace.gob.pe/eva/).

Finally, it is important to mention that in Peru any natural or legal person has the right to request and obtain environmental information held by the authorities.

28. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

The Peruvian Constitution establishes the fundamental right of every person to request, without statement of a cause, information he requires, and receive it from any public entity within the legal term, at its respective cost, except for information affecting personal privacy and that expressly excluded by the law or for reasons of homeland security.

Regarding environmental information, article II of the General Environmental Law (Law 28611), establishes that every person has the right to access, adequately and in a timely manner, public information on policies, norms, measures, works and activities that could affect, directly or indirectly, the environment, without the need to invoke justification or the interest that motivates such requirement.

Likewise, the regulation approved by Supreme Decree 002-2009-MINAM establishes that all environmental information that State entities access, possess, produce, or have available as a result of the exercise of their functions, is of a public nature and must be provided when said information is requested by any natural or legal person.

In this sense, based on the aforementioned regulations and the Law on Transparency and Access to Public Information (Law 27806), it is possible for any person to access information held by the authorities.

29. To what extent does your jurisdiction have legislation targeting modern slavery issues, both in relation to employers themselves but also their supply chains?

The Peruvian Constitution prohibits slavery in any of its forms. Peru has also ratified the international labor conventions on forced labor and child labor of the International Labor Organization.

Likewise, forced and child labor constitute a very serious administrative infraction according to the General Labor Inspection Law (Law 28806) and its regulations (Supreme Decree 019-2006-TR) and, at the same time, a crime according to the Code Penal.

Finally, in September 2019, Supreme Decree 015-2019-TR approved the “National Plan to Fight Forced Labor 2019-2022” with the general objective of reducing the presence of forced labor in the country.

30. What impact, if any, has COVID-19 had in relation to environmental regulations and enforcement in your jurisdiction?

The consequences of COVID-19 on Peruvian environmental regulation were as follows:

i. The validity of certain environmental permits was extended.
ii. The rules for the preparation and evaluation of EIA’s were modified to promote the use of remote mechanisms.
iii. The use of indirect and secondary information was privileged for the preparation of the environmental baseline.
iv. Compliance with environmental obligations involving field work was temporarily exempted.
v. Non-face-to-face environmental supervisions were temporarily privileged.
vi. Holders of projects with approved environmental permits were allowed to make modifications to their projects to adapt to the sanitary requirements of COVID19 without having to obtain approval of the amendment of their EIA.

However, it is important to mention that the aforementioned provisions were exceptional and temporary as a result of the Sanitary Emergency declared by the Peruvian State to deal with COVID-19.

31. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are
there any material proposals for significant updates or reforms in the near future?

Yes, in December 2019, Supreme Decree 013-2019-MINAM was issued to regulate the Framework Law on Climate Change (Law 30754) and enable the execution of public policies aimed at complying with the international commitments assumed by the Peruvian State before the United Nations Framework Convention on Climate Change.

Likewise, in July 2021, Supreme Decree 023-2021-MINAM approved the “National Environmental Policy to 2030”, which, in general terms, contains the diagnosis of the environmental situation in Peru, the objectives of the Peruvian State in environmental matters, as well as the strategies to meet said objectives. Said policy is mandatory for all State entities and it is foreseeable that its implementation will generate new regulations on environmental matters.

On the other hand, it is important to highlight that in the last three years important regulatory trends have been consolidated in the design of environmental instruments and in the exercise of environmental enforcement.

In the field of environmental instruments, the sectoral environmental authorities have been promoting regulatory changes to allow the use of the “prior communication” mechanism, as the only requirement to perform minor changes in projects that have an approved EIA.

Likewise, in the field of environmental enforcement, OEFA, in its capacity as the governing authority of SINEFA, has been promoting the exercise of responsive environmental enforcement, that is, favoring the fulfillment of environmental obligations before the imposition of sanctions.

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