

PERU



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| | PART I IMPLEMENTING GOOD REGULATORY PRACTICES |
| <p>1. Regulatory Forecast</p> | <p>There is no structured or systematic regulatory planning system, whether for Technical Regulations (RTs) or general administrative acts. <i>See Regulatory Policy in Peru, Assembling the Framework for Regulatory Quality</i>, OECD Reviews of Regulatory Reform (2016), at 90.</p> <p>PCM is considering requesting that non-independent agencies provide a list of upcoming regulatory proposals and publishing a comprehensive list.</p> <p>For standards, which are voluntary, agencies are required to prepare and submit a yearly Strategic Standardization Plan (PAN). The process is overseen by the National Institute for Quality (INACAL).</p> <p>See Resolution No. 048-2008/CNB-INDECOPI.</p> |
| <p>2. National Regulatory Register</p> | <p>Agencies are required to publish regulatory proposals in 'El Peruano', Peru's daily official government gazette, at least thirty (30) days prior to the measure entering into force.</p> <p>With respect to proposed technical regulations (RTs), there is also a Portal with a "Notifications" section on the website of the Ministry for Foreign Trade and Tourism (MINCETUR) that displays proposed RTs that have been notified to the WTO, both from Peru and from all WTO member countries. For each notified RT, the Portal includes: the name of the proposed RT, the WTO notification form, the name of the person to whom comments may be addressed, and the time period in which to send comments.</p> <p>See Online consultation of the WTO's Technical Regulations.</p> <p>See also the Organic Law of the Executive Branch, General Law of Administrative Procedure and Andean Community DECISION 562 (D562-CAN) (Article 14).</p> |
| <p>3. Advanced Notice of Proposed Rulemaking</p> | <p>Peru does not utilize advanced notices of proposed rulemakings.</p> |
| <p>4. Opportunity for Public Comment and Participation</p> | <p>As previously noted, an agency is required to publish regulatory proposals in 'El Peruano' at least thirty days prior to the measure entering into force. Each agency has discretion to determine the length of a public comment period on a proposed regulation. An agency also must allow interested parties to submit comments on the measures being proposed. <i>See</i> Supreme Decree No. 001-2009-JUS (DS001-2009-JUS), Art. 14; DS068-2007-EF.</p> |

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| | <p>The notice published by the agency in El Peruano must include:</p> <ul style="list-style-type: none"> • the name of the agency proposing the measure; • the text of the proposed regulatory measure and accompanying explanatory memorandum, including: a description of the legal basis that justifies the need for the proposal; an explanation of the most relevant aspects of the proposal; and a summary of pertinent background information (known as the “description of motivation”); • the deadline for submitting comments; and • the name of the person at the agency who is in charge of receiving comments. <p>See L30224. Article 14. Substitutes Article 7 of Supreme Decree 149-2005-EF (Transparency Rule); and Regulations of the General Agrarian Safety Act. Supreme Decree 18-2008-AG. <u>DS18-2008-AG</u> 1059-, which approves the General Agrarian Health Law. (Article 5).</p> |
| <p>5. Publication of Evidence/Regulatory Analysis</p> | <p>Executive agencies are required to publish what is known as the “description of motivation” for proposing a regulatory measure. This document sets out the need for the measure, with an explanation of the most relevant aspects of the measure and a summary of pertinent background information, including discussion of any data relied upon. A legal analysis must cover the constitutionality and legality of the proposed regulatory measure, in addition to its consistency with all other laws in the national legal system and with the obligations contained in international agreements to which Peru is party. This document is normally prepared by the agency in charge of the regulatory measure at the end of the process, i.e., once the regulatory proposal has been drafted.</p> <p>Agencies are required to prepare a cost-benefit analysis of a proposed regulatory measure, but publication is not mandatory. However, members of the public may access an agency’s cost-benefit analysis by requesting it directly from the agency. The need for the regulation must be appropriately justified in light of the nature of the problem, the likely costs and benefits, and any alternatives. According to interviews of Peruvian public officials conducted by OECD, in most cases a cost-benefit analysis is not actually undertaken. <i>See Regulatory Policy in Peru, Assembling the Framework for Regulatory Quality</i>, OECD Reviews of Regulatory Reform (2016), at 87-88 (hereinafter “OECD article”).</p> <p>See also L30224, Articles 15 to 19.</p> |
| <p>6. Respond to Stakeholder Input</p> | |

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| | <p>For general administrative acts, there is no requirement for most agencies (a few agencies within PCM excepted) to respond to stakeholder input and modify any proposed regulatory measures. <i>See Regulatory Policy in Peru, Assembling the Framework for Regulatory Quality</i>, OECD Reviews of Regulatory Reform (2016), at 91.</p> <p>However, with respect to RTs, Peru has notification obligations to the WTO, the Andean Community, and bilateral FTA partners. For purposes of its Andean Community obligations, Peru notifies RT proposals through a system called SIRT (Notification Information and Technical Regulation System). For such measures, an agency generally must allow submission of public comments for 90 days, respond to the comments in writing, and take the comments into account.</p> <p>With respect to comments received in response to a WTO notification, Peru's regulators are obliged to give a detailed reply to the comments and prepare and publish a reply document. To this end, there is a space reserved in the Portal for Technical Regulations of Peru in which agencies post their responses to comments:</p> <p>http://consultasenlinea.mincetur.gob.pe/webRT/frmBuscador.aspx</p> <p>See CAN-MBPR. December 7, 2012 version, page 40.</p> |
| <p>7. Reasonable period for entry into force</p> | <p>With respect to general administrative acts, the requirement is to publish a regulatory measure at least thirty (30) days before its effective date.</p> <p>With respect to RTs, the term between publication of a proposed RT and its entry into force should be at least six months, unless it hinders attainment of the legitimate objectives pursued. <i>See D562-CAN; DS068-2007-EF</i>.</p> <p>See D562-CAN, Article 9 and DS068-2007-EF, Article 1.</p> |
| <p>8. Opportunity for Judicial Review</p> | <p>We are unaware of any legal procedure through which an interested party can challenge a regulatory measure in a Peruvian court. However, INDECOPI maintains a bureaucratic barrier elimination process that private parties can use to challenge specific measures.</p> <p>(http://servicio.indecopi.gob.pe/buscadorResoluciones/competencia_elim_barrer_buroc.seam).</p> |

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| | <p>See Law Number 27444. General Administrative Procedure Law. (LPAG) and Legislative Decree Number 1256 (DL1256), which approves the Law for Preventing and Eliminating Bureaucratic Barriers. This decree establishes rules to prevent and eliminate illegal bureaucratic barriers and/or those that may be unreasonable, that restrict or hinder access to the market, and/or which violate the standards and/or principles that ensure administrative simplification. (See Articles 1-18)</p> |
| <p>9. Clearly Written and Understandable Regulations/ Directives</p> | <p>According to the Legislative Technique Guide for preparing Regulatory Drafts issued by Executive Branch Entities, regulatory measures must be unambiguous to ensure that members of the public understand their rights and obligations. Agencies are encouraged to use clear and simple language, and structure and organize regulatory measures in a manner that makes them understandable, and specifies the individuals and/or entities covered by the measure, the measure’s objective, and how the measure achieves that objective.</p> <p>See the Legislative Technique Guide for preparing Regulatory Drafts issued by Executive Branch Entities, 3rd Edition (GTPN), Section 2.3.</p> |
| <p>10. Use of Valid and Reliable Data & Sound Science</p> | <p>Peru does not have a policy on the use of science in regulation. However, regulatory measures that may affect plant or animal health must be based on technical and scientific analysis.</p> <p>See the General Agrarian Health Law – Legislative Decree 1059 (LGSA) and the GTPN, Section 4.2.2.</p> |
| <p>11. Risk-Based Approach</p> | <p>There is no requirement for agencies to use a risk-based approach for developing and adopting general administrative acts. <i>See Regulatory Policy in Peru, Assembling the Framework for Regulatory Quality</i>, OECD Reviews of Regulatory Reform (2016), at 96 (recommending that Peru adopt the use of Regulatory Impact Analyses which promote “the use of risk-based approaches to regulations and compliance”).</p> <p>See Supreme Decree 18-2008-AG. (DS18-208-AG) Articles 5 and 9 (role of SENASA and plant and animal health measures); Chief Office Resolution 355-2008-AG-SENASA (RJ355-2008-AG-SENASA (Attachment II); and CAN-MBPR, pages 25-27.</p> |

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| <p>12. Regulatory Impact Assessment (RIA)</p> | <p>The use of RIAs in the regulatory process in Peru has been isolated and sporadic. <i>See</i> item 5.</p> <p>With respect to RTs, the Manual of Best Regulatory Practices lays out how to conduct a Regulatory Impact Assessment. The Manual recommends that regulatory entities develop an RIA with the following sections:</p> <ul style="list-style-type: none"> Part 1: The problem that the technical regulation seeks to solve Part 2: The objectives of the technical regulation Part 3: Options considered Part 4: The evaluation of economic, social and environmental impacts: <ul style="list-style-type: none"> • Risk Evaluation • Evaluation of Benefits • Cost Evaluation Part 5: Use of International Standards as a basis for technical regulations Part 6: Compliance Evaluation Part 7: Mutual Recognition and Equivalence Part 8: Control and Surveillance Part 9: Public Comment <p>See LEGISLATIVE DECREE 1310 (DL1310); SUPREME DECREE 075-2017-PCM. (RDL1310); Ministerial Resolution N° 196-2017-PCM. (RM196-2017-PCM); and CAN-MBPR (pages 25-27) (RIA).</p> |
| <p>13. Pro-Competitive Analysis</p> | <p>Peru does not require regulators to prepare a pro-competitive analysis when developing a regulatory measure, although it is possible that MEF examines competition issues when it reviews the measure.</p> |
| <p>14. Assessment of International Impact</p> | <p>There is no requirement for regulators to conduct an analysis of the international impacts of proposed regulatory measures. The way this factor is treated largely depends on the regulator’s experience. If a proposed measure may have international trade implications, MINCETUR is likely to weigh in during the regulatory process.</p> <p>However, regulators must comply with WTO requirements on the use of international standards as a basis for RTs, as well as Andean Community requirements for the development of RTs. Under the Andean requirements, a regulator must use Andean, regional, and/or national standards in cases where international standards are ineffective or inappropriate to fulfill</p> |

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| | <p>the regulator’s legitimate objectives. See D562-CAN, Article 8 (Guidelines for preparing, adopting and applying RTs in countries belonging to the Andean Community of Nations and at the community level) and CAN-MBPR, page 430. (Use of International Standards as a basis for draft Technical Regulations).</p> |
| <p>15. Leverage Private Sector in the Development of Standards & Conformity Assessment</p> | <p>The National Institute for Quality (INACAL), part of the Ministry of Production (and formerly part of INDECOPI), is Peru’s highest technical-standard authority and is responsible for standardization, accreditation, and metrology. See https://www.inacal.gob.pe/.</p> <p>INACAL is in charge of forming Standardization Technical Committees (CTNs) – collective bodies made up of producers, consumers, technicians, academics, and public-sector officials – that develop technical standards (Article 3, RN048).</p> <p>With respect to international standards, Peru looks to standards developed by Geneva-based bodies first, followed by regional standards (e.g., Andean, CEN), national standards (e.g., BSI, DIN), and association standards.</p> <p>Peru also involves the private sector in compliance verification, specifically for verifying whether a product, process, service, or quality management system is in compliance with technical requirements or specifications. As of 2016, there were 82 Labs, 45 Inspection Agencies, 18 Calibration Laboratories, 6 bodies for Certifying Products and one body for Certifying Management Systems in Peru, all of them private and accredited by INACAL.¹</p> <p>See Law Number 30224 (L30224), which creates the National System for Quality and the National Quality Institute (see, in particular, Articles 7, 8, 10, 20, 21 and 26; and Resolution 048-2008/CNB-INDECOPI (RN048), Article 14.</p> |
| <p>16. Ex-Post Assessments of Regulatory Impacts</p> | <p>Article 2 of the DL1310 orders the entities of the Executive Branch of the State of Peru to carry out a new Analysis of Regulatory Quality (ACR) of all regulations that establish administrative procedures, save for those contained in laws, and to do so every three years. This is done for the purpose of identifying, reducing and/or eliminating those that are unnecessary, unjustified, disproportionate, redundant, or are not in compliance with the General Administrative Procedure Law. The first report under DL1310 is due at the end of 2018.</p> |

¹ See slide 8 at https://www.mincetur.gob.pe/reglamentostecnicos/documentos/eventos/2017/junio/05_Acreditacion_en_Peru_Juana_H.pdf.

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| | <p>Regulatory provisions subject to the ACR include (Article 4, RDL1310):</p> <ul style="list-style-type: none"> • Current regulatory provisions establishing administrative procedures; • Draft regulatory provisions establishing administrative procedures; • Regulatory provisions establishing administrative procedures which were issued by each entity during the three-year review period; and • Modification drafts for current regulatory provisions establishing administrative procedures that have not been approved. <p>Certain instruments are exempted from the ACR process, including tax-related regulatory provisions and internal management administrative procedures.</p> <p>RDL1310 lays out four principles to be evaluated as part of the ACR:</p> <ul style="list-style-type: none"> • Legality: ensuring that administrative authorities in charge of administrative procedures act within the Constitution and the Law; • Necessity: ensuring that the administrative procedure contributes to the regulation’s goal of resolving a relevant problem, as well as analyzing whether there are better alternatives to the administrative procedure; • Effectiveness: verifying that each of the information obligations are relevant in that they effectively contribute to achieving the goal of the administrative procedure, and every unnecessary complexity is eliminated; and • Proportionality: analyzing the objective of the administrative procedure and the information obligations/administrative burden on the public to determine whether they are proportionate. <p>RDL1310 requires that non-independent regulatory entities evaluate all administrative burdens in the regulatory stock against these principles, in accordance with the provisions of the “Manual for Applying the Analysis of Regulatory Quality,”</p> |

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| | <p>to determine whether administrative burdens can be eliminated and, for those burdens that cannot be eliminated, whether their compliance costs can be reduced.</p> <p>With respect to standards, Article 18.3 of L30224 establishes that Peruvian Technical Standards may be reviewed every five years. This process is overseen by the National Institute for Quality (INACAL).</p> |

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| <p>17. Located Close to Important Government Decision Makers</p> | <p>There is no single central coordinating body in Peru. <i>See Regulatory Policy in Peru, Assembling the Framework for Regulatory Quality</i>, OECD Reviews of Regulatory Reform (2016), at 88. Coordinating functions are split among three entities.</p> <p>The Presidency of the Council of Ministers (PCM), is the Ministry in charge of coordinating and evaluating the national and sectoral policies of the Executive Branch and coordinates relations with the rest of the Branches of the State, as well as with agencies, regional governments, local governments and civil society. (Article 15 to 19, L29158).</p> <p>The Multi-Sectorial Regulatory Quality Commission (CCR), which was established in July 2017 and is chaired by PCM, is comprised of:</p> <ul style="list-style-type: none"> • the General Secretary of PCM or his/her representative, who presides over it and has the status of a minister; • the Vice Minister of Economy from the Ministry of Economy and Finance (MEF), or his/her representative; and • the Justice Vice Minister of the Justice and Human Rights Ministry (MINJUS), or his/her representative. <p>Article 8, RDL1310. Article 2.3 of DL1310 states that CCR will oversee the ACR process. (Note that while CCR is presided over by PCM, it is not part of PCM. See RDL1310.)</p> |

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| | <p>Additionally, there is a Vice-ministerial Coordinating Council (Comisión de Coordinación Viceministerial or “CCV”), comprised of 35 participating vice-ministers, that reviews and discusses multi-sectoral regulatory proposals. Each vice-minister may raise substantive or procedural issues. A draft regulation will not be adopted until all issues have been resolved and the vice-ministers reach a consensus.</p> <p>See the Executive Branch Governing Law (L29158), which establishes the principles and the basic standards for organization, competencies and functions of Peru’s Executive Branch (Articles 15 to 19); DL 1310, Article 2.3 (ACR Validation); RDL1310, Articles 7, 8, 9, 10, 11. (Constitution and attributes of the CCR and its Technical Secretariat); and Ministerial Resolution 199-2017-PCM (RM199-2017-PCM) (approving the Internal Regulations of the Multi-Sector Regulatory Quality Commission).</p> |
| <p>18. Given Formal Authority of Regulatory Oversight</p> | <p>There currently is no single central coordinating body in Peru.</p> |
| <p>19. Staffed with Experts and Given Independence</p> | <p>There currently is no single central coordinating body in Peru.</p> <p>There are eight staffers working in the CCR (not including outside consultants). They include five lawyers, one economist, and one engineer.</p> |
| <p>20. Given the Necessary Scope of Review to be Effective</p> | <p>While there currently is no central coordinating body in Peru, the process for issuing new regulatory measures generally follows two different paths.</p> <p>If a draft regulation would not add or modify an administrative burden or it would not require the approval of three or more regulatory entities, there is no review of the draft regulation. The process, in general terms, is as follows:</p> <ol style="list-style-type: none"> 1. The agency prepares a draft of the regulatory measure and the description of motivation (described above). In some instances, working groups comprised of staff from different areas within the sponsoring agency are formed in order to assist in the preparation of these drafts. 2. The legal department of the sponsoring agency reviews the draft proposal and, if necessary, prepares an analysis of whether the proposal will impact national legislation. 3. The draft proposal is then published on the website of the sponsoring agency and in El Peruano for public consultation and, if the proposal is a TR, notified to the WTO and the Andean Community. |

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| | <p>4. Thereafter, the proposed regulatory measure is sent to the head of the regulatory agency for approval and signature.</p> <p>5. If the proposal requires the signature of the President of Peru, it is sent to the office of the President where it is reviewed and signed.</p> <p>6. The regulation is published as final in El Peruano.</p> <p><i>See Regulatory Policy in Peru, Assembling the Framework for Regulatory Quality, OECD Reviews of Regulatory Reform (2016), at 84-85.</i></p> <p>A draft regulation that would add or modify an administrative burden and/or requires the approval of three or more regulatory entities is reviewed. See the attached flow chart for an outline of that process.</p> |
| <p>21. Establish and Foster Good Regulatory Practices and Principles of Regulation</p> | <p>The Government of Peru has begun to more strongly promote best regulatory practices:</p> <p>It has created the Multi-Sector Regulatory Quality Commission, which works as coordinating and reviewing agency for Regulatory Quality Policy.</p> <ul style="list-style-type: none"> • It has developed and begun to implement the ACR, a systematic process for reviewing regulations from the perspective of administrative loads. • It has created a process that can be initiated by request to propose the elimination of bureaucratic barriers. • It has developed various Guides and Manuals for disseminating and adopting Best Regulatory Practices, such as: <ul style="list-style-type: none"> ○ the Legislative Technique Guide; ○ the Transparency Guide; ○ the Guide about regulatory quality and publication of regulatory drafts; ○ the Manual for Best Regulatory Practices of the Andean Community; and ○ the Manual for Regulatory Quality Analysis. <p>See DL1256; DL1310; and RDL1310.</p> |
| <p>22. Ensure Forward Planning of</p> | <p>See item 1.</p> |

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| <p>Regulatory Activity</p> | |
| <p>23. Review Proposed and Final Regulatory Measures before they are Published</p> | <p>See the explanation of the tripartite review for draft regulatory measures cutting across the jurisdiction of three or more agencies in item 20 and in the attached flow chart.</p> <p>In addition, the first comprehensive process for reviewing regulations from the perspective of regulatory quality, with an emphasis on administrative loads – the ACR -- is being carried out by the Multi-Sector Regulatory Quality Commission, and will be completed at the end of 2018.</p> <p>See RDL1310.</p> |
| <p>24. Coordinate International Regulatory Cooperation</p> | <p>PCM has the lead with respect to interfacing with OIRA, COFEMER, and other central coordinating bodies on cross-cutting regulatory policy issues. With respect to TBT matters, MINCETUR has the lead, assisted on standards, accreditation and metrology matters by INACAL.</p> <ul style="list-style-type: none"> • In APEC, Peruvian delegations have taken part in workshops organized by Mexico and given by experts, for the purpose of designing guides for methods and methodologies for evaluating regulatory impact. • Within the Pacific Alliance and CPTPP, Peru has taken part in the negotiations for the Regulatory Improvement Chapter. • Peru has begun the process of OECD accession and is taking steps to improve its regulatory policy and adopt best regulatory practices. <p>Peru is a part of the Andean Community (CAN), which is comprised of Colombia, Bolivia, Ecuador and Peru.</p> <p>The CAN consists of Agencies and Institutions, including:</p> <ul style="list-style-type: none"> • The Andean Presidential Council, made up of the presidents of all member States. • The Andean Council of Foreign Affairs Ministers, which formulates foreign policy in connection with affairs regarding integration. • The General Secretariat, which administers and coordinates the integration process. |

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| | <ul style="list-style-type: none"> • The Andean Court of Justice, which controls the legality of SAI acts and resolves controversies between countries. • The Andean Parliament, made up of 20 Parliamentarians elected by popular vote, five for each Member Country. It deliberates on Andean integration and proposes regulatory actions to strengthen integration. <p>Facilitating the participation of Member Countries in the process of regional integration is among the goals of the CAN, with a view to gradually creating a Latin American common market. The following instruments are relevant in this regard:</p> <ul style="list-style-type: none"> • Decision 562, Guidelines for preparing, adopting and applying RTs in Andean Community member countries and at the community level; • Decision 615, Notification and Technical Regulation Information System of the Andean Community (SIRT), so as to prevent the formation of unnecessary technical barriers to intra-community trade; • Decision 506, Acknowledgement and Acceptance of Product Certificates for products traded in the CAN; • Decision 516, Harmonization of legislations in connection with Cosmetic Products; and • Decision 706: Harmonization of Legislation in connection with House Cleaning Products and Personal Hygiene Absorbing Products. <p>CAN website: http://www.comunidadandina.org/</p> <p>SIRT website: http://extranet.comunidadandina.org/sirt/public/index.aspx</p> <p>See DECISION 563 CAN. Codification of the Andean Sub-Regional Integration Agreement (Cartagena Agreement), Articles 1 to 7.</p> |