Global Financial Services Regulatory Guide - Peru

3. What types of activities require a license in your jurisdiction?

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# What types of activities require a license in your jurisdiction?

According to the Peruvian Banking Law, any person conducting intermediation banking activities within Peruvian territory requires the prior authorization of the SBS. Therefore, from a regulatory perspective, financial entities not authorized to operate in Peru by the SBS are not allowed by Peruvian law to perform financial intermediation. The term "financial intermediation" is described as "the collection of funds, in any way, and its placement through any of the transactions allowed by the law," and the SBS has discretion in the interpretation of the scope of this provision. Article 11 of the Peruvian Banking Law sets forth a series of commercial activities that may only be conducted in Peru by entities previously authorized by the SBS, such as engaging in the business of financial system entities and, primarily, collecting or receiving money in a habitual or any other form from third parties as deposits, and then allocating in a habitual form such resources as loans, investments or allotments of funds, under any contractual arrangement. Once authorized, entities performing these activities will be subject to the SBSs supervision.  Likewise, companies wishing to offer insurance in Peru must obtain prior permission from the SBS.

In addition, no person may, without prior authorization from the SBS, advertise or publicize announcements asserting or suggesting the execution of transactions or services that require a license in Peru or publicize services in such a way that may lead someone to believe that it is licensed to offer products and services that may only be carried out with a license from the SBS.

The following activities are reserved for entities licensed by the SBS:

Activities similar to the corporate purpose of licensed entities of the Peruvian financial system, and in particular, regularly receiving money from the public by way of deposits, loans or any other form, and regularly using those funds for loans, investments or to somehow provide availability of such funds, under any contractual form

Advertising or publishing announcements asserting or suggesting the execution of transactions or services reserved for licensed entities of the Peruvian financial system

Using in its corporate name, in business forms or in any other means of publicity, any term that may lead someone to believe that it is licensed to offer products and services that may only be carried out with a license from the SBS

Accordingly, any action similar to those described above that is being pursued without a license from the SBS may be considered “Illegal Banking.” Pursuant to the Peruvian Banking Law, a legal presumption of engaging in Illegal Banking activities will apply to a person or entity that, from a fixed place of business, invites the public to deposit their funds under any agreement or contractual arrangement, or in general makes any publicity thereof, without a license from the SBS.

Nevertheless, there are no restrictions on granting loans to Peruvian residents. Foreign financial institutions may serve Peruvian clients in the normal course of business, provided such activities are conducted outside of Peru.

The scope of the Peruvian Banking Law and the regulations enacted thereunder is limited to banking activities conducted within Peruvian territory. Any banking activity conducted outside Peru targeted towards clients or potential clients in Peru does not require a license.  As a result, a foreign financial institution may serve clients in Peru in the normal course, provided such activities are conducted outside of Peru. If there are activities to be conducted by the foreign financial institution in Peru, such activities should be strictly limited to providing financial advisory services, referring clients or prospects to specific employees abroad, or distribution of marketing materials.  Market practice is to conduct such activities on a one-on-one basis.

As mentioned, the foreign financial institution may not provide financial advisory services if such services are conducted: (i) for the purpose of receiving or depositing money from the public; or (ii) as a means of selling its products. As a result, the foreign financial institution may freely provide financial advisory activities in Peru on a one-on-one basis, provided such activities do not violate or contravene items (i) and (ii) above.

Regarding activities conducted by fintech companies, there are currently no special laws and regulations in place designed for the fintech sector, and such companies are not subject to regulation provided they do not perform activities for which a license is required.  Activities that may require a license are those referred to as financial leasing (*arrendamiento financiero*) and factoring provided companies performing such activities met certain requirements provided in the regulations enacted by the SBS.  In addition, fintech companies, depending on their activity, shall register with the SBS as provided in anti-money laundering and counter-terrorism financing regulations.

With respect to crowdfunding activities, such activities can be performed by companies that have obtained a license from the securities market regulator (Superintendencia del Mercado de Valores or SMV) to act as a Sociedad Administradora de Plataforma de Financiamiento Participativo Financiero or other companies licensed and supervised by the SMV or the SBS.

Peru has not yet created a specific legal and regulatory regime for cryptocurrencies or other cryptoassets. To date, there is no specific legal regulation for its registration and supervision. However, the SMV has issued press releases warning the general public of the existence of Initial Coin Offerings, pointing out that the companies that perform these offerings are not supervised by any governmental entity and that investors should become adequately informed regarding the risks involved before investing their money in such assets.  Also, the SBS has issued bulletins referring to multi-scheme fraud cases using cryptocurrencies.  Also, the Peruvian Central Bank published an article on its website referring to the risks related to cryptocurrencies.

However, in the press releases, bulletins and articles published by Peruvian regulators, such entities have pointed out that there are no specific regulations in Peru that cover the offer and/or promotion of cryptocurrencies or tokens, so companies that make such offers and/or promotions are not under their supervision. Such entities have only warned the public through communications and other mass media about the risks of investing in unsupervised assets, such as the aforementioned cryptocurrencies, which have been used on some occasions for crimes of fraud.

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