Global Public M&A Guide - Peru

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*This content was last reviewed around January 2025.*

# Overview

## 1. Overview

[Last updated: 1 January 2025, unless otherwise noted]

**1.1 Peruvian economy**

In the early 2000s, Peru experienced sustained and remarkable economic development, becoming one of the fastest growing countries while maintaining a low inflation rate. However, in the last decade, growth has been affected, to a large extent, due to international circumstances. However, local factors, mainly of a political nature, have also played a role in slowing down the country's growth.

The successful growth of Peru was caused by solid economic policies introduced by the various democratically-elected governments, sustained productivity growth, private investment and the country's integration into the world economy. These factors helped to reduce poverty and strengthen the middle class, turning the country into a popular place to invest in Latin America.

The macroeconomic development of Peru during the period from 2003 to 2013 was impressive, with a real gross domestic product (GDP) annual growth rate that averaged 6.6% (the highest rate in Latin America). However, in 2014, growth reached only 2.4%, improving at the end of 2015 to 3.3%. The slowdown was caused by external factors that lead to a decrease in real exports and foreign capital flows, as well as a reduction in the price of ores exported by Peru. After that, the growth rate experienced a slight increase, reaching 3.9% in 2016, before slowing down again in 2017 to 2.5%, rising in 2018 to 4.0% and then crunching once more to 2.3% in 2019. This last period was characterized by the political uncertainty caused by the constitutional shut down of the Congress and ongoing investigations against important political and business figures as part of Operation *Lava Jato*. Despite that being a low figure, Peru was the second fastest growing economy in Latin America during 2019, only behind Colombia, and has the economy with the lowest risk in the region, according to reports of the Peruvian Central Bank.

During 2020, the COVID-19 pandemic had an important impact on the Peruvian economy as its GDP dropped 11.0% as compared to 2019, despite the efforts of the Peruvian government to contain the spread of the virus and mitigate its impact in the economy. 2021 showed a recovery of 13.3% in comparison to the year 2020 as a result of the increase in commodity prices and the implementation of a vaccination program that allowed for restrictions impacting the economy to be progressively lifted.

In the years that followed, the political arena was marked by uncertainty due to the victory of Pedro Castillo in the presidential elections of 2021. His government was characterized by constant corruption scandals which escalated to the president attempting a failed coup in December 2022, causing his immediate removal as president and incarceration. After these events, Castillo's vice-president, Dina Boluarte, assumed and currently maintains the presidency. These events caused significant social unrest which resulted in important economic losses throughout the country. Even after the protests ended, the new government was not free of heavy criticism, with historically low approval levels.

In such an instable political context, the Peruvian economy experienced little growth during the years 2022 and 2023, with rates of 2.7% and 0.6%, respectively. A minor improvement is estimated by the Peruvian Central Bank for the last year. According to its last inflation report, Peru will reach a 3.0% rate of growth for the year 2024.

**1.2 The Peruvian securities market**

There are 262 entities registered in the Peruvian Public Capital Markets Registry (*Registro Público del Mercado de Valores*) with either debt or equity securities listed on the Lima Stock Exchange.

The Lima Stock Exchange also participates in the Latin America Integrated Market (*Mercado Integrado Latinoamericano* or the "**MILA**"), which attempts to integrate the stock exchange markets of Colombia, Chile, Peru and Mexico under one trading platform. Trading on the Lima Stock Exchange is primarily done on a new electronic trading system called *Millennium*, which became operational in May 2015 and has the support of the London Stock Exchange.

Furthermore, since the year 2022, the stock exchanges of Peru, Chile and Colombia have been working on the implementation of a regional and more comprehensive integration of their own. After obtaining authorizations from all competent regulators, a corporate integration of the three exchanges was effected in November 2023. As a result, all three exchanges share the same holding company under the name NUAM Exchange. Currently, the exchanges continue to work together towards the creation of a fully integrated market for the three countries.

The stock market capitalization of companies listed on the Lima Stock Exchange is currently US$185.56 billion, surpassing its pre-pandemic levels.

# General Legal Framework

## 2. General Legal Framework

[Last updated: 1 January 2025, unless otherwise noted]

**2.1 Main and complementary legal framework**

The main rules and principles of Peruvian law relating to public takeover bids can be found in:

The Peruvian Securities Market Law, approved by Supreme Decree 020-2023-EF, as amended (*Texto Único Ordenado de Ley de Mercado de Valores*).

Tender Offer Regulations approved by CONASEV Resolution N° 009-2006-EF-94.10, as amended (*Reglamento de Oferta Pública de Adquisición y de Compra de Valores por Exclusión*).

In addition, there are a number of other regulations that need to be taken into account when considering a public takeover bid, as they are of general application and contain certain definitions that the main regulations refer to. These are the:

Corporations Law approved by Law N° 26887, as amended (*Ley General de Sociedades*).

Economic Group Regulations approved by SMV Resolution N° 019-2015-SMV/01 (*Reglamento de Propiedad Indirecta, Vinculación y Grupos Económicos*).

Market Abuse Regulations approved by SMV Resolution Nº 005-2012-SMV-01, as amended (*Reglamento contra el Abuso de Mercado - Normas sobre Uso Indebido de Información Privilegiada y Manipulación de Mercado*).

**2.2 Supervision and enforcement by the Capital Markets Superintendency**

The Securities Market Law regulates certain securities matters such as transparency and disclosure, corporate takeovers, capital markets instruments and operations, broker-dealers and credit-rating agencies. The Peruvian Capital Markets Superintendency (*Superintendencia del Mercado de Valores* or the "**SMV**"), formerly known as the National Supervisory Commission for Securities and Companies (*Comisión Nacional Supervisora de Empresas y Valores* or "**CONASEV**"), is a governmental entity that reports to Peru's Ministry of Economy and Finance with functional, administrative, economic, technical and budgetary autonomy. The SMV has broad regulatory powers, including reviewing, promoting and making rules regarding the securities market, supervising its participants and approving the registration of public offerings of securities (including public tender offers).

The SMV supervises the securities markets and the dissemination of information to investors. It also (i) governs the operation of the Peruvian Public Capital Markets Registry, (ii) regulates mutual funds, publicly placed investment funds and their respective management companies and broker- dealers, (iii) monitors compliance with accounting regulations by companies under its supervision as well as the accuracy of financial statements, (iv) registers and supervises auditors who provide accounting services to those companies registered with the SMV, and (v) registers and supervises public offerings, exchange offers and tender offers (including takeover bids), among other types of public offerings, and in each case, monitors compliance with applicable regulations.

The SMV is also in charge of enforcing the securities markets' rules and regulations and has the power to impose fines or disqualify entities from participating in the securities markets.

In the case of acquisitions that violate the tender offer rules, the SMV may impose the following sanctions:

Administrative sanctions constituting fines between 1 and 700 "tax units". One tax unit is set by the tax authorities as PEN 5,350 in 2025.

Suspend the voting rights of the acquired securities.

Require the acquirer to sell the acquired securities in the market.

However, to the extent that the SMV determines that it would be more beneficial for the market, the SMV can, at the request of the acquirer, allow the offeror to launch a tender offer for 100% of the securities.

The SMV also has the power to grant exemptions to certain tender offer regulations that would otherwise apply in a public takeover bid.

**2.3 Foreign Investments Restrictions**

Foreign investments are not restricted in Peru. The Peruvian Constitution grants foreign and local investors the same rights over their investments. Accordingly, the acquisitions of shares in Peruvian companies are freely permitted, both through the stock market and over the counter operations. Hence, the purchase by a foreign investor of a direct or indirect controlling interest in a Peruvian public company would not trigger any requirement to obtain governmental authorizations.

**2.4 General principles**

The following principles apply in general to public takeovers launched in Peru. They are based on the Securities Market Law, the Corporations Law and the Tender Offer Regulations:

Shareholders must have absolute and free control over the shares they own. Any rules established in a company's by-laws that limit the transfer of shares or give preferential acquisition rights to current shareholders, are considered void. The company cannot recognize shareholder agreements that violate these principles.

Any decision taken in a general shareholders' meeting that damages the interests of the company as whole, directly or indirectly benefiting one or more shareholders, can be judicially challenged by any shareholder, regardless of its interest in the company.

The board of directors must act with diligence, loyalty and in the best interest of the company as a whole, without favoring any particular shareholder. The board will be held liable for any decision adopted that violates applicable laws, the company's by-laws, abuses its powers, is made with negligence or willful misconduct, or conflicts with the interest of the company.

Any act, omission, conduct or practice that violates market integrity and transparency is forbidden, such as (a) trading, or placing orders to trade, that give a false or misleading perception of the volume of, or demand for, one or more securities: (i) raising, reducing or maintaining the price of such securities to an abnormal or artificial level, or (ii) increasing or reducing the level of liquidity of such securities; (b) trading using fictitious devices or any other devices in order to deceive or mislead investors; (c) insider trading; (d) improper disclosure of inside information to another person; and (e) misuse of information that is not generally available but would affect an investor's decision.

All shareholders of the target company must be properly informed of the terms, conditions, advantages and disadvantages of the bid. For such purpose, the board of directors must issue a report assessing the merits of the proposal, and all shareholders must be granted access to such report.

An offeror must, before launching a bid, ensure that it will be able to fulfill its obligations by grating guarantees to secure the total amount of the consideration offered.

Since the date of the original acquisition of substantial interest (in the case of a mandatory tender offer), and during the tender offer period in both, voluntary and mandatory tender offers, an offeror is not allowed to acquire common shares or any other securities that may grant voting rights in the open market, either through the Lima Stock Exchange or over-the-counter.

Finally, Peruvian tender offer regulations aim to ensure equal treatment among all shareholders of the target company, regardless of the number of voting shares each shareholder may have, as well as ensure a minimum level of disclosure and protection and fair treatment of all shareholders.

# Before a Public Takeover Bid

## 3. Before a Public Takeover Bid

[Last updated: 1 January 2025, unless otherwise noted]

**3.1 Shareholding rights and powers**

The table below provides an overview of the different rights and powers that attach to different holding percentages in a listed corporation in Peru:

|  |  |
| --- | --- |
| **Shareholding** | **Rights** |
| One share | * Right to participate in the distribution of dividends and shareholder equity resulting from the liquidation of the company. However, pursuant to Article 232 of the Peruvian Corporate Law, the right to collect past-due dividends (i) in the case of corporations (*sociedades anónimas*) other than publicly-held companies (*sociedades anónimas abiertas*), expires 3 years after the date on which the dividend payments was due, and (ii) in the case of companies that are publicly held companies (*sociedades anónimas abiertas*), expires 10 years after the date on which the dividend payment was due. * Right to attend and vote at a general shareholders' meeting or special shareholders' meeting, as applicable. * Right to supervise the way in which the management conducts its business, in the manner set forth in applicable laws and the company's by-laws. * Right to request all information related to a shareholders' meeting that has been called; provided, however, that the board is entitled to reject such request if it considers that such disclosure may jeopardize the company or its businesses. * Right to exercise preemptive or accretion rights in connection with newly issued shares as part of a capital increase on a pro rata basis, unless (i) in the case of corporations (*sociedades anónimas*), it is otherwise agreed to by holders of 100% of the voting shares, (ii) in the case of publicly-held companies (*sociedades anónimas abiertas*), it is otherwise agreed to by holders of 40% or more of the company's outstanding voting shares, provided that the capital increase does not favor, directly or indirectly, certain shareholders to the detriment of others, (iii) the capital increase results from a conversion of debt to common shares, and (iv) the capital increase results from a corporate reorganization. * Right to exercise redemption rights if the company (i) changes its corporate purpose, (ii) changes the place of organization to a foreign country, or (iii) other cases contemplated by the applicable laws and/or the company's by- laws. * Right to judicially challenge decisions of the general shareholders' meeting when it is contrary to the Corporations Law or any other applicable law, the company's by-laws, the interests of the company as a whole and in benefit of one or more shareholders, or when such decision can be annulled pursuant to the Corporations Law or the Peruvian Civil Code. * Right to propose to the general shareholder's meeting the removal of a member of the board in case such member has a conflict of interest with the company. * Right to request to a notary public or a judge to call the annual mandatory shareholders' meeting when such shareholders' meeting has not been summoned within the time and for the purposes set forth in the company's by- laws. * Right to file damage claims against any member of board unless the damage has been caused to the company as a whole. * Right to obtain a certified copy of minutes from a shareholders' meeting, even if the shareholder has not attended. * For corporations (*sociedades anónimas*) and for publicly-held companies (*sociedades anónimas abiertas*): quorum required in the second call to install a general shareholders' meeting and discuss simple matters such as removal of members of the board, order of audits, approval of financial statements or distribution of dividends. * Only for publicly-held companies (*sociedades anónimas abiertas*): quorum required in the third call to install a general shareholders' meeting and discuss complex matters: (i) a change in the by- laws, (ii) capital increase or reduction, (iii) the issuance of obligations, (iv) the sale in a single act of assets with an accounting value that exceeds 50% of the company's share capital, (v) a merger, division, reorganization or transformation, and (v) the company's dissolution and/or liquidation. |
| 5% or more (of existing share capital with right to vote) | * Only applicable for publicly-held companies (*sociedades anónimas abiertas*): right to request the board to convene the general shareholders’ meeting and, if the board fails to do so within 15 days following such notification, request a public notary or a judge to call it. * Request information regarding the company’s operations, to the extent the information requested is not deemed confidential information and/or its disclosure does not cause damage to the company. |
| 20% or more (of existing share capital with right to vote) | * Request the distribution of dividends in a percentage that does not exceed 50% of the annual net profits. |
| 25% (of existing share capital with right to vote) | * Only for corporations (*sociedades anónimas*): request the board to convene the general shareholders’ meeting and, if the board fails to do so within 15 days following such notification, request a notary public or a judge to call it. * Request all documents related a shareholders’ meeting that has been called; the board cannot reject the request as long as such shares are represented at the meeting. * Request once to postpone a summoned shareholder’s meeting for no less than three and no more than five days. * Request the attendance of a notary public in a shareholders’ meeting. |
| 25% (of existing share capital with right to vote) | * Only for publicly-held companies (*sociedades anónimas abiertas*): quorum required in the second call to install a general shareholders’ meeting and discuss complex matters: (i) a change in the by-laws, (ii) capital increase or reduction, (iii) the issuance of obligations, (iv) the sale in a single act of assets with an accounting value that exceeds 50% of the company's share capital, (v) a merger, division, reorganization or transformation, and (vi) the company's dissolution and/or liquidation. |
| 33.33% | * Exercise corporate liability actions against board members, provided that: (i) the petition comprises indemnities in favor of the company as a whole, and (ii) the shareholders that promote the action have not approved anything in the contrary in the shareholders’ meeting. |
| 40% (of existing share capital with right to vote) | * Only for publicly-held companies: approve that shareholders shall not exercise pre-emptive rights to subscribe to new common shares in a share capital increase, provided that the capital increase does not favor, directly or indirectly, certain shareholders to the detriment of others. |
| 50% (of existing share capital with right to vote) | * For corporations (*sociedades anónimas*) and for publicly-held companies (*sociedades anónimas abiertas*): quorum required in the first call to install a general shareholders' meeting and discuss simple matters such as removal of members of the board, order of audits, approval of financial statements or distribution of dividends. For corporations (*sociedades anónimas*), the company's by-laws may establish higher quorum requirements and majorities, but not lower. * Only for publicly-held companies (*sociedades anónimas abiertas*): quorum required in the first call to install a general shareholders' meeting and discuss complex matters: (i) a change in the by- laws, (ii) capital increase or reduction, (iii) the issuance of obligations, (iv) the sale in a single act of assets with an accounting value that exceeds 50% of the company's share capital, (v) a merger, division, reorganization or transformation, and (v) the company's dissolution and/or liquidation. |
| 50% + one share (represented at a general shareholders’ meeting) | * Only for corporations (*sociedades anónimas):* take decisions on simple matters, such as removal of members of the board, order of audits, approval of financial statements or distribution of dividends. For corporations (*sociedades anónimas*), the company’s by-laws may establish higher quorum requirements and majorities, but not lower. * Only for publicly-held companies (*sociedades anónimas abiertas*): take decisions on both single and complex matters at a general shareholders’ meeting. |
| 50% + one share (of existing share capital with right to vote) | * Only for corporations (sociedades anónimas): take decisions on complex matters such as (i) a change in the by-laws, (ii) capital increase or reduction, (iii) the issuance of obligations, (iv) the sale in a single act of assets with an accounting value that exceeds 50% of the company’s share capital, (v) a merger, division, reorganization or transformation, and (v) the company’s dissolution and/or liquidation. For corporations (sociedades anónimas), the company’s by-laws may establish higher quorum requirements and majorities, but not lower. |
| 60% (of existing share capital with right to vote) | * Only for corporations (*sociedades anónimas*): quorum required in the second call to install a general shareholders' meeting and discuss complex matters: (i) a change in the by- laws, (ii) capital increase or reduction, (iii) the issuance of obligations, (iv) the sale in a single act of assets with an accounting value that exceeds 50% of the company's share capital, (v) a merger, division, reorganization or transformation, and (v) the company's dissolution and/or liquidation. For corporations (*sociedades anónimas*), the company's by-laws may establish higher quorum requirements and majorities, but not lower. |
| 66.66% (of existing share capital with right to vote) | * Only for corporations (*sociedades anónimas*): quorum required in the first call to install a general shareholders’ meeting and discuss complex matters: (i) a change in the by- laws; (ii) capital increase or reduction; (iii) the issuance of obligations; (iv) the sale in a single act of assets with an accounting value that exceeds 50% of the company’s share capital; (v) a merger, division, reorganization or transformation; and (v) the company’s dissolution and/or liquidation. For corporations (*sociedades anónimas*), the company’s by-laws may establish higher quorum requirements and majorities, but not lower. |

**3.2 Restriction and careful planning**

Peruvian law contains a number of rules that apply even before a public takeover bid is publicly announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder, announcements of a potential takeover bid or a target company, among others. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start up a process intended at launching a public takeover bid.

**3.3 Insider trading and market abuse**

Any undisclosed public tender offer or the intention to launch a public takeover bid is deemed inside information by the Peruvian Securities Market Law and Market Abuse Regulations. Therefore, while the tender offer has not yet been announced to the market, all persons that have knowledge of it must refrain from misusing such information and keep that information strictly confidential. The Peruvian Securities Market Law and the Market Abuse Regulations consider that the information is misused when a person: (i) reveals the information to third parties, (ii) recommends operations to others based on such information, and (iii) uses the information to directly or indirectly benefit themself or third parties. In addition, such rules prohibit, among other things, manipulating the target’s stock price, e.g., by creating misleading rumors of a potential takeover bid.

**3.4 Due diligence**

Peruvian Tender Offer Regulations do not contain specific rules regarding whether or not a prior due diligence may be conducted, nor how such due diligence shall be conducted. Nevertheless, a prior due diligence or pre-acquisition review is generally accepted in practice (and by the SMV), and appropriate mechanisms have been developed to conduct a due diligence or pre-acquisition review and to mitigate potential market abuse and early disclosure concerns. These include the use of strict confidentiality procedures and data rooms.

**3.5 Disclosure of shareholding**

Although it is not standard practice for a Peruvian company to include a provision in its by-laws governing the ownership threshold above which share ownership must be disclosed. Under the current Economic Groups Regulations, listed companies must inform the SMV of the members of its economic group and a list of its holders of common shares that hold more than a 0.5% share interest, as well as any change to such information.

In addition, the Securities Market Law establishes that listed companies must inform the SMV and the Lima Stock Exchange of any transfer of its common shares made by any person or entity who directly or indirectly owns 10% or more of the company's total share capital or by any person or entity who directly or indirectly becomes owner of, or is no longer an owner of, 10% or more of the total share capital of a listed company.

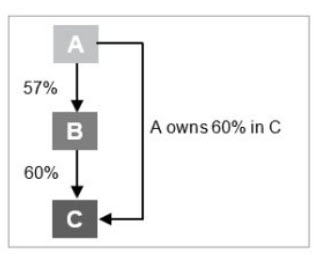
**3.6 The concept of "substantial interest"**

The obligation to launch a tender offer is triggered when a person or group of persons (acting in concert) intends to acquire or has acquired a "substantial interest" in a target company (see 4 below). According to Peruvian Tender Offer Regulations, a substantial interest is acquired by a person or group of persons (acting in concert) when the purchase (i) will result in such person or group of persons (acting in concert) beneficially owning (directly or indirectly) at least 25% of the outstanding shares with voting rights of a company in one or a series of transactions, or (ii) allows such person to (a) appoint a majority of the directors of the target company or (b) amend the by-laws of the target company. Ownership thresholds of 50% and 60% also trigger certain rights to appoint a board member or control the company in general. When a person reaches or surpasses each of the 25%, 50% and 60% thresholds the obligation to launch a tender offer is triggered. This means that it is possible to move in between thresholds without triggering the obligation to launch a tender offer. For instance, if a person already owns 26% and increases its ownership to 47%, that will not trigger an obligation to launch a tender offer.

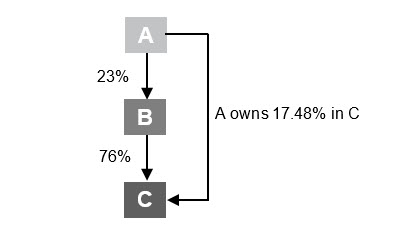
**3.7 Calculation of indirect ownership**

If an interest is acquired indirectly through an intermediate company, the following methods are used to determine whether the acquisition qualifies as an acquisition of substantial interest in the target company and, therefore, if such indirect acquisition triggers the obligation of the acquirer (or acquirers) to launch a subsequent mandatory tender offer or to otherwise sell the shares indirectly acquired in the target company.

In cases where a person (A) acquires more than 50%, e.g., 57%, of the voting shares of an intermediate company (B), such person is deemed to acquire the percentage owned by the intermediate company (B), e.g., 60% in another company. This triggers the tender offer regulations in respect of the third company (C).



In cases where a person (A) acquires less than 50%, e.g., 23%, of the intermediate company (B), the indirect participation is calculated by multiplying such percentage by the percentage owned by the intermediate company (B), i.e., 76% in another company (C). This could trigger the tender offer regulations in respect of company C. In this example, company A does not meet the 25% threshold of outstanding shares with voting rights and, therefore, no mandatory tender offer would be triggered by company A in respect of either company B or company C.



**3.8 Acting in concert**

Pursuant to the Tender Offer Regulations, a person or group of persons acting in concert that acquires or intends to acquire a "substantial interest" (see 3.6) will be jointly liable to carry out a mandatory takeover bid, even though each individual group member does not surpass the required threshold to establish a "substantial interest" or otherwise have the power to (i) appoint a majority of the members of the target company's board of directors, or (ii) amend the by-laws of a target company.

**3.9 Irrevocability**

Peruvian laws provide that once the tender offer has been announced, such offer cannot be withdrawn, even in the case of a voluntary takeover bid.

**3.10 Guarantees**

An offeror must, prior to launching a bid, ensure that it will be able to fulfill its obligations in the offer by grating guarantees to secure the total amount of the consideration offered. If the consideration offered is (i) in cash or in securities to be issued by the target company or the offeror, as applicable, the guarantee must be granted for the total amount of such consideration and it may be in cash, a letter of credit or any other type of guarantee; provided, however, that such guarantee is unconditional, irrevocable and enforceable upon demand, and (ii) to be paid with previously issued securities, the offeror shall evidence that it is the legal owner of all the securities offered in exchange, and such securities are blocked in the account of the respective broker-dealer under which securities are registered or otherwise evidence that such securities will be available to pay the consideration offered in full.

**3.11 Exemptions**

There are a number of exceptions in which there is no obligation to launch a tender offer even though a substantial interest in a target company has been acquired. The main exemptions are the following:

Prior written consent from all shareholders with a right to vote.

When substantial interest is acquired as a consequence of a reorganization among companies of the same economic group, as long as such reorganization does not alter the ultimate control of the economic group.

When substantial interest is acquired by a broker-dealer as a result of its fulfilment of an underwriting obligation.

When shares are acquired by a depository for the purposes of subsequently issuing ADRs (American Depository Receipts), GDRs (Global Depository Receipts) or similar securities.

When an ADR, GDR or similar security is acquired, unless the acquirer exercises the right to vote the underlying shares or requests delivery of such underlying shares.

When substantial interest is acquired through an initial public offering.

When substantial interest is acquired through a conversion of debt into capital stock under a bankruptcy procedure.

When substantial interest is acquired through the exercise of pre-emptive rights.

When substantial interest is acquired through the assignment of shares to a trust, as long as the trustee is a local financial entity or a foreign bank classified as a first in class by the Peruvian Central Bank and the trustor or originator maintains the right to vote of those shares.

# Effecting a Takeover

## 4. Effecting a Takeover

[Last updated: 1 January 2025, unless otherwise noted]

**4.1 Types of public takeover bid**

Peruvian securities regulations include mandatory takeover rules applicable to the acquisition of a substantial interest in a company that has at least a class of shares with voting rights registered with the SMV (a "**Target Company**"). The Securities Market Law and the Tender Offer Regulations require any person, who directly or indirectly acquires in one or a series of transactions a substantial interest in a Target Company to launch a tender offer (*Oferta Pública de Adquisición*) (a "**Mandatory Tender Offer**"). In addition, a person who directly intends to acquire in a substantial interest in one or a series of transactions is also required to launch a Mandatory Tender Offer prior to acquiring the substantial interest, unless such person acquires the substantial interest (i) indirectly, (ii) in a public secondary offering of securities, (iii) in a single transaction, or (iv) in no more than a series of four consecutive transactions in a period of three consecutive years. Any tender offer launched prior to acquiring a substantial interest so long as you do not fall in the situations described in items (i), (iii) or (iv) is referred to herein as a "Voluntary Tender Offer".

Except for Voluntary Tender Offers and cases where the Mandatory Tender Offer is launched prior to acquiring substantial interest in a Target Company, the tender offer is required to be launched at the earlier to occur of (i) six months from the date on which the requirement to launch the tender offer is triggered, i.e., the date on which the substantial interest is acquired, and (ii) five trading days from the date the valuation entity files the valuation report referred to below (the "**Valuation Report**").

This mandatory procedure has the effect of alerting other shareholders of the Target Company and the market that a person or a group of persons acting in concert has acquired a significant percentage of the Target Company's voting shares, and gives them the opportunity to sell their voting shares at the price offered by the offeror. The offeror is required to launch a tender offer unless: (i) shareholders representing 100% of the voting rights give consent in writing to transfer all or part of the common shares to the offeror; (ii) voting shares are acquired by a depositary in order to subsequently issue ADRs, ADSs or similar securities; or (iii) voting shares are acquired by means of exercising pre-emptive rights.

**4.2 Number of securities**

Except for Voluntary Tender Offers and cases where the Mandatory Tender Offer is launched prior to acquiring substantial interest in a Target Company, Mandatory Tender Offers must be launched for at least the number of shares resulting from the following formula:

[x/y] x [1-z] = minimum number of shares to be tendered

Where:

x = Percentage of securities acquired in the Target Company over the last three years.

y = Percentage of securities owned by third parties before the transaction(s) which triggered the tender offer.

z = Percentage of securities owned after the transaction that triggered the tender offer.

**4.3 Consideration offered**

In a Mandatory Tender Offer, the price offered for the tender of securities must be the greater of (x) the actual price paid in the acquisition of the substantial interest and (y) the price determined in the Valuation Report by a valuation entity appointed by a special committee (the "**Appointing Committee**") comprised of three SMV officers and one representative appointed by the Target Company who has no voting rights in the Appointing Committee. There is no regulatory period for the appointment of the valuation entity by the Appointing Committee. However, in practice the Appointing Committee takes approximately one month to appoint the valuation entity. The valuation entity is required to value the target company for purposes of determining the minimum purchase price per share and file the Valuation Report with the SMV within 30 calendar days from its appointment; provided, however, that such period may be extended by the Appointing Committee at the request of the valuation entity.

In determining the minimum price of the shares, the valuation entity must use international valuation practices and the following criteria: (i) the book value of the Target Company, (ii) the liquidation value of the Target Company, (iii) the Target Company's valuation as an ongoing business, (iv) the average price of the Target Company's voting shares during the immediately prior six months, and (v) in case there has been a public tender offer over the Target Company's voting shares during the previous year, the price offered in that public tender offer. After applying all of the foregoing criteria except where any of such criteria cannot be applied – the valuation entity must provide the minimum purchase price for purposes of the Mandatory Tender Offer based on the criteria that, in its sole discretion, is most appropriate for such purposes.

In cases where the tender offer is a Voluntary Tender Offer, there are no minimum prices that must be complied with and there no is no legal requirement to appoint a valuation entity for purposes of valuing the shares.

**4.4 Tender offer period**

If the tender offer is a Voluntary Tender Offer, the period during which the tender offer is open can be determined by the offeror, provided such period is not less than 20 trading days. This period can be extended once by the offeror with no less than four business days' prior notice for a period that shall not exceed 20 additional trading days.

If the tender offer is a Mandatory Tender Offer, the tender offer period must be of at least 20 trading days and not more than 40 trading days.

Once launched, both the Voluntary Tender Offer and the Mandatory Tender Offer cannot be withdrawn by the offeror.

**4.5 Procedure**

Regardless of whether there is a Mandatory Tender Offer or a Voluntary Tender Offer, the offeror must notify the Target Company, the SMV and the Lima Stock Exchange of the proposed tender offer. The tender offer period begins the day after all such entities have been notified of the tender offer.

Such notification must include (i) a prospectus, (ii) evidence of the guarantees granted by the offeror, (iii) any governmental or administrative prior authorization, if applicable (e.g., in the case of financial institutions), (iv) a draft of the tender offer notice to be published in the Lima Stock Exchange Bulletin (during the tender offer period) and in a local newspaper, and (v) powers of attorney granted by the offeror to its representatives, if applicable.

Once the foregoing documents have been filed with the SMV, the SMV may comment on the information submitted within five business days from the filing date. The offeror has three business days to address the comments.

**4.6 Board of directors' report**

During the first seven days following commencement of the tender offer, or when a competitive bid has been launched, the board of directors of the Target Company is required to issue a report describing the advantages and disadvantages of tendering shares and disclosing any information regarding any agreements between the offeror and the Target Company, its board members or its shareholders.

**4.7 Competitive bid**

Competing bids may only be launched during the first 10 days after the tender offer period has commenced. Pursuant to Peruvian law, competitive bids are not required to improve the terms and conditions of the first tender offer.

Shareholders may accept the tender offer or any of the co-existing competing bids.

**4.8 Acceptances**

Acceptances of the tender offer must be processed by an authorized broker-dealer and may be withdrawn at any moment during the tender offer period.

**4.9 Allocation**

Once the tender offer period expires, an officer of the Lima Stock Exchange (*Director de Rueda*) will allocate the tendered securities the following day. The Lima Stock Exchange will notify the results of the tender offer to the SMV and will publish them on the Lima Stock Exchange Bulletin.

**4.10 Settlement**

The settlement of the tender offer will be done following the rules that are applicable to transactions made through the Lima Stock Exchange trading system, i.e., settlement shall be done in T+2.

**4.11 International standards**

If a tender offer takes place in Peru and in another jurisdiction simultaneously, the period and certain other conditions can be adjusted to comply with international standards, provided that prior approval of the SMV is obtained.

**4.12 Non-conforming acquisition**

To the extent that a substantial interest is acquired in a Target Company in violation of the applicable tender regulations, the acquirer of such shares may be subject to the following:

Administrative sanctions may be imposed (fines between 1 and 700 tax units).

The SMV may suspend the voting rights of all the securities acquired by the offeror during the three years prior to such acquisition and also those securities owned by the offeror prior to the acquisition that violated the tender rules.

The SMV will require the acquirer to sell the securities in the market through a public offering.

In the case of indirect acquisition of substantial interest in the Target Company, the offeror may either launch a subsequent Mandatory Tender Offer or launch an unconditional public offer to sell the securities that were indirectly acquired either through an auction process or in the open market. If the offeror decides to launch a public offer to sell through an auction process, the initial maximum price to be offered for such securities shall be the lower between (i) the actual price paid in the indirect acquisition of the substantial interest and (ii) the price determined in the Valuation Report, as described above under "Consideration Offered".

To the extent that the SMV determines that it would be more beneficial to the market, at the request of the acquirer of the shares, the SMV may, at its own discretion, allow the offeror to launch a tender offer for the remaining shares of the Target Company.

# Timeline

## 5. Timeline

[Last updated: 1 January 2025, unless otherwise noted]

As a general rule, the takeover bid process for a Mandatory Tender Offer is similar to the process that applies in case of a Voluntary Tender Offer, with certain exceptions.

The table below contains a summary overview of the main steps of a typical Voluntary Tender Offer under Peruvian law:

|  |
| --- |
| **Step** |
| 1. Preparatory stage:   * Preparation of the bid (analysis, due diligence, commit financing, drafting of prospectus). * The offeror approaches the target and/or its key shareholders. * Negotiations with the target and/or its key shareholders. |
| 2. Launching of the bid:   * The offeror files the tender offer notice with the SMV, the Lima Stock Exchange and the target company. * The offer is binding and irrevocable the first business day after the tender notice has been filed. On the same date, the tender offer notice is published in the Stock Exchange Bulletin and remains published during the tender offer period. * The tender offer notice must also be published in the Official Peruvian Gazette "El Peruano" and another newspaper within two business days following the date in which the tender offer period commences. * The bid must be in force for at least 20 trading days. |
| 3. During the Tender Offer period:   * The offeror, SMV and Lima Stock Exchange must grant recipients of the bid access to all the filed documents. * Within seven days following commencement of the tender offer period, the board of directors must issue a report describing the advantages and disadvantages of tendering the shares. * The SMV has five business days from the beginning of the tender offer period to comment on the filed documents. * The offeror has three business days following receipt of the SMV's comments to address them. Failing to satisfactorily address the comments gives the SMV the right to declare the tender offer invalid. * The offeror might improve its offer and competing offers may only be filed within 10 trading days from the commencement of the tender offer period. |
| 4. Settlement:   * Settlement shall occur within three business days following expiration of the tender offer period. |

Set out below is an overview of the main steps for a voluntary public takeover bid in Peru.

**5.1 Indicative timeline of a voluntary public takeover**

Click here to view the diagram for [Peru](https://resourcehub.bakermckenzie.com/en/-/media/global-public-ma-handbook/images/timelines/peru.png)

# Takeover Tactics

## 6. Takeover Tactics

[Last updated: 1 January 2025, unless otherwise noted]

The most common takeover tactics include the following:

**6.1 Calculation of substantial interest in the Target Company**

Although, under a hostile takeover bid, it will be difficult for the offeror to obtain information concerning the holdings of each shareholder of the Target Company and their identities from the Target Company or the Peruvian depository entity (CAVALI ICLV S.A.), it is crucial for the offeror to carry out an investigation using publicly available information from the SMV and the Lima Stock Exchange, to determine the number of shares with voting rights outstanding as well as the number of other securities outstanding, i.e., (i) convertible bonds or any other securities that entitle their owners to acquire or subscribe common shares, to the extent that such securities grant their owners to exercise such rights within 18 months following their acquisition, and (ii) ADRs, GDRs or similar securities.

**6.2 Obligation to acquire additional shares in a subsequent Mandatory Tender Offer**

As mentioned in 4.2 above, except for Voluntary Tender Offers and cases where the Mandatory Tender Offer is launched prior to acquiring a substantial interest in the Target Company, if an offeror acquires a substantial interest without having launched a tender offer, such acquisition will trigger the obligation to launch a tender offer for the number of additional common shares as a result of the formula described in 4.2 above. Therefore, the offeror must be aware of this obligation and make sure it has secured the funds or securities needed to pay the required consideration before acquiring a substantial interest in the Target Company.

**6.3 Deciding whether to launch a prior Mandatory Tender Offer or a subsequent Mandatory Tender Offer**

Before deciding to launch a tender offer, an offeror should consider and evaluate the advantages and disadvantages of launching a prior Mandatory Tender Offer or a subsequent Mandatory Tender Offer after having acquired a substantial interest in the Target Company. The following table summarizes the main advantages and disadvantages of implementing each strategy:

|  |  |  |
| --- | --- | --- |
|  | **Prior Mandatory Tender Offer** | **Subsequent Mandatory Tender Offer** |
| Consideration offered | Determined by the offeror at its sole discretion. | Minimum consideration determined by a valuation entity (see 4.3 above). Offeror has no control over the consideration to be offered. |
| Valuation Report | No. | Yes. |
| Competing bids | Possible. | Unlikely, as there is already a bidder which has acquired substantial interest in the Target Company. |
| Power to determine the number of common shares to be acquired | Yes. | No. A Mandatory Offer subsequent to the acquisition of substantial interest shall be launched to acquire an additional number of common shares. |
| Prior disclosure regarding intention to acquire substantial interest | Yes. | No. |

**6.4 Stake building**

Potential bidder must take the following into consideration:

If the potential bidder intends to acquire a substantial interest in the Target Company before launching a Mandatory Tender Offer, such acquisition must be made in no more than a series of four consecutive transactions in a period of 3 years. Otherwise, the SMV may consider that such acquisition has been made in violation of Peruvian tender offer rules, since the bidder should have launched a prior Mandatory Tender Offer.

The offeror is not allowed to acquire or commit to acquire common shares in the open market (either through the Lima Stock Exchange or over the counter) during the tender offer period. This limitation does not extend to the offeror's affiliates.

**6.5 Irrevocability of the bid**

Once the tender offer has been launched, the offeror will not be able to revoke the offer.

**6.6 Insider trading and market manipulation**

Pursuant to the Securities Market Law and the Market Abuse Regulations, any person who has access to inside information in connection with (i) a potential takeover bid or (ii) any undisclosed information of the Target Company or its securities or businesses shall keep such information confidential and cannot (a) reveal that information to third parties, (b) recommend operations to others based on such information, (c) use that information to directly or indirectly benefit himself/herself or third parties, and (d) implement any price manipulation practices in order to create artificial, false or misleading appearances with respect to the price of the Target Company's common shares.

**6.7 Anti-takeover defense mechanisms**

According to the Corporations Law, the fundamental obligations of the members of the board are (i) to act in good faith, in the best interest of the company, and for the benefit of all its shareholders, (ii) not to adopt any decision that benefits themselves or any related party, and (iii) to avoid conflicts or potential conflicts of interest between themselves as members of the board and those of the company as a whole.

In addition, pursuant to the Tender Offer Regulations, once directors and the management have knowledge of a potential takeover offer (or that the company is under the threat of a takeover) and until the announcement of the results of the takeover, they must be impartial towards potential competitive offers, giving priority at all times to the interests of the shareholders and refrain from performing, conducting or concerting any act that is not in the ordinary course of the company's business. They must not disrupt or frustrate the normal course of an offer or favor an offeror. Therefore, directors and the company's management cannot agree to issue new shares or other securities, execute option agreements or sell any of the company's assets, among other things.

There is no express prohibition, however, regarding the execution of agreements prior to having knowledge of a takeover offer with the purpose of preventing or deterring unwanted takeovers, which are subject to a condition precedent consisting of having been notified with a takeover offer. Nonetheless, depending on which anti-takeover mechanism is agreed or implemented, such act may be challenged for violating fundamental principles, i.e., if they damage the company as a whole, or such measure is considered in benefit of a particular shareholder or group of shareholders such as those who have control over the Target Company, except where such decisions have been agreed, consented to or accepted by all of the company's shareholders with voting rights. This requirement may imply, in practice, that no defensive strategies may be adopted, given the fact that if the potential offeror (or any of its affiliates or subsidiaries) previously acquired one common share of the future Target Company and votes against the decision in the actual shareholders' meeting, it will not be possible to adopt the decision with 100% votes of the voting shares.

Anti-takeover mechanisms are unusual in Peru and there is no case law that addresses the legality or validity of them. However, in the following chart we address the viability of some anti-takeover mechanisms commonly used in other jurisdictions and their consequences if implemented in a Peruvian listed company:

|  |  |
| --- | --- |
| **Mechanism** | **Assessment and considerations** |
| **1. Share buyback**  Share buyback "with a view to avoid imminent and serious harm" to the company. | * Once the management has been notified of the bid, it is prohibited from performing any act that may frustrate the bid. * A buyback without cancelling shares is only possible if it is done to prevent serious harm to the company, or if there is an agreement at the general shareholders’ meeting. The company can only keep them for two years without cancelling them, and the acquisition cannot exceed 10% of the total share capital. |
| **2. Crown jewels**  An arrangement concerning key assets of the company which, in the event of a takeover bid, may lead to the assets being sold. | * The board would not be able to perform these actions because they could be held liable for damages to the company. * If a shareholders’ meeting agrees on this mechanism, it could be challenged for violating the interests of the company, unless adopted by all holders of common shares. |
| **3. Limitation of voting rights**  Clause in the by-laws providing for a proportional restriction of voting rights (applying to all shareholders equally). | * It is not possible. According to the Corporations Law, every share has one vote. |
| **4. Limitation on share transfers** | * Listed companies cannot establish limitations to transfer shares according to the Securities Market Law. |
| **5. Golden Parachutes** | * Such agreements may be questionable as it may be deemed that they go against the interests of the company in benefit of certain shareholders and/or the administration. |

# Squeeze-out of Minority Shareholders after Completion of the Takeover

## 7. Squeeze-out of Minority Shareholders after Completion of the Takeover

[Last updated: 1 January 2025, unless otherwise noted]

Under Peruvian legislation, it is not possible to compel the remaining shareholders to sell their common shares to the offeror after a successful takeover bid. The only possible option is to negotiate with the remaining shareholders.

# Delisting

## 8. Delisting

[Last updated: 1 January 2025, unless otherwise noted]

There are no legal limitations to prevent a public company from delisting and going private. However, the delisting of a certain class or all common shares gives the holders that were absent or voted against that decision in the shareholders' meeting a redemption right. Accordingly, if there is a decision to delist, the company and/or the shareholders that voted in favor of the delisting must launch an offer directed at such shareholders offering to acquire all their holdings (*Oferta Pública de Compra por Exclusión*). Any decision that has an economic effect equivalent to the delisting of the securities triggers the obligation to launch the foregoing offer.

# Contacts

## Contacts within Baker McKenzie

Liliana Espinosa, Pablo Berckholtz and Alonso Miranda in the Lima office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Peru.

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