Global Public M&A Guide - Peru

General Legal Framework

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# 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.

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