



Project Finance **2025**

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glg Global Legal Group

Expert Analysis Chapter

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1 Overview

1.1 What are the main trends/significant developments in the project finance market in your jurisdiction?

Peru's infrastructure gap is estimated to be over US\$110 billion. Key areas where project development is currently urged include transportation, healthcare, water and sanitation, education, among others. The slowdown in bridging the infrastructure gap has been marked by the local political crisis, the COVID-19 pandemic, uncertainty due to constant leadership changes at critical ministries and governmental agencies, as well as weak execution capacity at the government level to successfully incentivise long-term investment. All of these factors have been adverse to project development in the country. Despite these challenges, certain figures and policies implemented during 2024 and prospects for 2025 seem to shed a new light.

In 2024, ProInversion, the private investment promotion agency of Peru, awarded projects with investment commitments for approximately US\$9 billion. This record-breaking figure is the highest in the last 10 years for Peru and more than triples the 2023 results. Greater attention and sense of urgency have been posed to prioritise certain portfolio projects and investments, and this trend is expected to continue for 2025.

An enhanced infrastructure development focus is critical for the country and certain new policies intend to pave this path. For example, the updated National Infrastructure Plan prioritises projects addressing sustainable infrastructure and basic social needs, the new Ministry of Infrastructure is expected to start operations in 2025 to boost a more efficient execution of public investment in projects, new guidelines for green finance have been emerging within the Peruvian regulatory framework, and an administrative simplification shock is expected for 2025 to reduce bureaucracy and related burden for the development of projects. Based on the foregoing, it is expected that the public and private sectors continue to deploy efforts to close the infrastructure gap and procure investment in strategic sectors in Peru. If these renewed actions maintain steadily and thoroughly towards bridging the infrastructure gap, and are not adversely affected by other external factors, we should expect to see more project finance in Peru in the coming years.

1.2 What are the most significant project financings that have taken place in your jurisdiction in recent years?

In recent years, the most significant project financings in Peru have taken place in port, airport, energy, mining, telecommunication, and digital infrastructure, among other industries. Relevant examples include:

- The Chancay Megaport Project, sought as a major hub connecting South America with Asia, whereby the project company, a joint venture among Chinese state-owned Cosco Shipping and Peruvian miner Volcan, secured a US\$975 million project financing from a group of Chinese banks.
- The Expansion of the Jorge Chavez International Airport, in which the Lima airport concessionaire obtained US\$1.25 billion financing from a group of international banks.
- Lima Metro Line 2 Project, a major urban transportation project for the city of Lima, the country's capital, was active in financing and refinancing its debt with a combination of government funding and multilateral development bank loans.
- The Peru LNG Project, which obtained US\$2.25 billion financing for the construction and development of the first liquefied natural gas processing plant in South America.
- The Modernization of the Salaverry Port in which the port operator secured a US\$132 million financing for this public-private partnership (PPP) project.
- The San Martin Solar Photovoltaic Project, sought as the largest solar plant in Peru's history, in which Solarpack obtained a US\$176 million senior green loan financing for the construction of said project.

2 Security

2.1 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Typically, an agreement is used to secure each type of asset in project finance. For example, specific security agreements are used to pledge shares, secure machinery and equipment, mortgage real estate property, mortgage concession rights, secure cash flows and bank accounts, assign material rights, secure rights under material project documents, among others. However, it is feasible under Peruvian law to use one or more security trust structures to cover a group of secured assets, except for certain securities, such as concession rights

or similar assets which are required to be secured as provided by applicable law or authorised under the relevant project agreement. The security over assets is perfected once the parties enter into the relevant deed, except in the case of mortgages, which require the registration of the same before the Public Registry for its creation and perfection.

2.2 Can security be taken over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground)? Briefly, what is the procedure?

Yes. There are no restrictions under Peruvian law on taking security over real property, plant, machinery, equipment or any other asset owned by a project company, sponsor, obligor and/or guarantor. In cases in which security is obtained via a pledge, security trust and/or assignment of rights, the security is perfected once the parties enter into the relevant deed executed before a Public Notary. The deed is thereafter filed with the applicable Public Registry for publicity and enforceability purposes. In the case of real estate property, concession rights and similar immovable assets that are subject to mortgage, such security is perfected upon its registration before the applicable Public Registry. Note that project agreements may contemplate requirements and authorisations for certain securities.

2.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

Yes; however, certain notification formalities apply for enforceability purposes. By means of an assignment agreement, pledge or security trust over receivables, the secured parties may take security over receivables of a project company, its sponsors and/or guarantors, as the case may be. Nonetheless, it is required under Peruvian law to notify the debtors or assigned debtor parties regarding the security over receivables or assigned rights and, upon such notice being made via a notarised letter, the security shall become enforceable against said parties.

2.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Yes. Securities may be granted over cash deposited in bank accounts. Such security may be created and perfected via a pledge or security trust.

In the case of a pledge over bank accounts, the holder of the bank account shall provide instructions to its bank and include the details of the bank accounts in the pledge documents. Upon the occurrence of an event of default, the secured party may provide notice to the pledge representative appointed by pledgor and pledgee, so that it can enforce the pledge by instructing the bank to collect funds to cover for such default.

On the other hand, in the case of a security trust over bank accounts and cash flows, the project company instructs a trustee to open bank accounts under the name of the security trust estate, and all or substantially all project funds flow into such accounts to be applied in the agreed cash waterfall for expenditures, including debt repayment. In project finance, the decision to use a pledge or security trust for cash deposited in bank accounts needs to be reviewed on a case-by-case basis and considering the status of the project, projected revenues, risks and other guarantees as part of the security package.

2.5 Can security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Briefly, what is the procedure?

Yes, security can be taken over shares in companies incorporated in Peru. The procedure is reflected in the relevant security agreement, whether it be a pledge over shares or security trust over shares. Perfection of the security is completed upon execution of the deed and annotation of said security in the stock ledger of the company and/or at the relevant clearinghouse's electronic registry. Most shares of Peruvian incorporated companies are in certificated form and registered within the stock ledger of the company. Shares may also be registered in electronic entry form at an authorised clearinghouse in Peru, such as CAVALI. The latter is generally the case for public listed companies. In the case of a pledge, the shares are held by the pledgor and the pledge is annotated as an encumbrance and lien in the applicable share certificates and stock ledger and/or, if applicable, before the clearinghouse entity. In the case of a security trust, the shares are transferred and held in trust by a regulated entity authorised as a trustee, and such transfer in trust is annotated in the applicable share certificates and stock ledger and/or, if applicable, before the clearinghouse entity in case of public listed companies.

2.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

Only notarisation and registration fees apply in Peru. No stamp duties or other fees apply for security documents over assets. Typically, each Public Notary charges its notarisation fees based on the scope of notary services and number of pages per deed. Registration fees are calculated by the public registrar considering the applicable tariffs and fee caps of the registry office and collateral value specified in the security document.

2.7 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

In Peru, filing and notification in relation to a security does not involve significant amount of time or expense. Filing and notification is generally done on the same day or within the next day after the deed of the security document has been executed by the relevant parties. However, registration of the security is subject to review of several formalities to be assessed by a public registrar. Generally, registration is achieved within 10 to 30 business days; however, this term is referential and specific filings may be subject to observations. The registration process may be extended if observations are made by the registrar. Registration expenses are not considered to be significant.

2.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground), etc.?

In project finance in Peru, the concession agreement or main project document typically provides for certain specific regulatory consents that the concessionaire or project company is

required to obtain prior to the creation of security interests over certain project rights, such as the approval of or favourable opinion on the permitted creditors and permitted secured indebtedness by the contracting authority or regulator.

3 Security Trustee

3.1 Regardless of whether your jurisdiction recognises the concept of a “trust”, will it recognise the role of a security trustee or agent and allow the security trustee or agent (rather than each lender acting separately) to enforce the security and to apply the proceeds from the security to the claims of all the lenders?

Yes. Security trustees and agents are recognised in Peru and they are entitled to enforce the security as per the instructions of the secured parties under the relevant security agreement. Trustees and local collateral agents are commonly used under the security documents in project finance and corporate finance transactions in Peru.

3.2 If a security trust is not recognised in your jurisdiction, is an alternative mechanism available (such as a parallel debt or joint and several creditor status) to achieve the effect referred to above which would allow one party (either the security trustee or the facility agent) to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

No. Security trusts are recognised and widely used for projects and corporate finance in Peru.

4 Enforcement of Security

4.1 Are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or the availability of court blocking procedures to other creditors/the company (or its trustee in bankruptcy/liquidator), or (b) (in respect of regulated assets) regulatory consents?

The concession agreement or main project document may provide for step-in rights mechanisms that may be addressed by permitted creditors and the contracting authority in case of enforcement of the mortgage over the concession or the pledge over shares issued by the project company. In certain cases, the mechanism may entail a public auction or re-auction of the project in order to award it to a new project company or group. Court blocking procedures are available to creditors or other parties via injunction reliefs that may be temporarily granted by a Peruvian court. Injunction reliefs may be granted to temporarily prevent the enforcement of a project asset or the takeover of the project company, provided that certain legal and formal requirements are met.

4.2 Do restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies?

No special restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies. Peruvian law treats local and foreign investors or creditors equally for these purposes.

5 Bankruptcy and Restructuring Proceedings

5.1 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the security?

If a project company is declared insolvent in Peru, then the immediate suspension of payments applies and creditors would need to evidence their rights before the insolvency authority, INDECOPI. The creditors’ meeting would come to a resolution on the future of the project company, as to whether it will undergo a restructuring or liquidation. In the case of a restructuring, the security granted to project lenders would still be valid and enforceable; however, the payment may be rescheduled if approved by the creditors’ meeting. In the case of a liquidation, the assets of the project company would be sold and the proceeds used to repay creditors in the order preferred by statute. If a security trust is used as part of the security package, such security would be treated as bankruptcy-remote and not considered part of the project company’s assets and rights subject to the insolvency, provided that the applicable preference period has been met. In such case, the project lenders would have exclusivity to enforce the rights and assets within the terms of the security trust.

5.2 Are there any preference periods, clawback rights or other preferential creditors’ rights (e.g. tax debts, employees’ claims) with respect to the security?

Any disposition or transfer of rights or assets, whether in property or in trust, made by the project company within the 12 months prior to the date when the insolvency proceeding is published by the Peruvian insolvency authority, may be legally challenged and subject to clawback actions by other creditors. In a liquidation scenario, the project company’s preferred creditors by statute would be as follows: first, the labour creditors; second, the secured creditors (i.e. creditors holding security interests over specific assets); third, tax debts; and fourth, all other unsecured creditors.

5.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

Project companies are not excluded from bankruptcy or insolvency proceedings in Peru. The General Insolvency Law excludes the private pension fund managers, banks and financial entities authorised to operate in Peru from the general insolvency regime and proceedings.

5.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of the project company in an enforcement?

No, only court proceedings apply for such purposes.

5.5 Are there any processes other than formal insolvency proceedings that are available to a project company to achieve a restructuring of its debts and/or cramdown of dissenting creditors?

A project company may restructure its debt via a private renegotiation and refinancing agreed with its creditors, or via filing for an insolvency proceeding.

5.6 Please briefly describe the liabilities of directors (if any) for continuing to trade whilst a company is in financial difficulties in your jurisdiction.

If a company has losses that reduce its net equity to less than one-third of its paid-in share capital, then its directors, managers and/or representatives are personally and jointly liable for the company's acts and contracts as of the date on which such irregular status was triggered.

6 Foreign Investment and Ownership Restrictions

6.1 Are there any restrictions, controls, fees and/or taxes on foreign ownership of a project company?

There are no special controls, fees or taxes for foreign ownership of a project company in Peru. Any foreign individual or entity may own, directly or indirectly, a project company. Nevertheless, restrictions on foreign ownership apply to real estate, mining rights, and natural and energy resources located 50km within the country's boundaries, unless prior authorisation is obtained via a Supreme Decree issued for reasons of public necessity.

6.2 Are there any bilateral investment treaties (or other international treaties) that would provide protection from such restrictions?

This is not applicable.

6.3 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

Expropriation laws in Peru provide that the government may acquire privately owned real estate or assets via expropriation when required for public need or national security. Expropriation may only be carried out if the private owner is properly compensated by the government. Regarding investment protection, as regards project companies and project assets, the concession agreement or main project document provides for a compensation mechanism in case of early termination due to nationalisation or expropriation.

7 Government Approvals/Restrictions

7.1 What are the relevant government agencies or departments with authority over projects in the typical project sectors?

The following main government agencies and departments have authority and different administrative competence in projects in Peru:

- The entity in charge of the project, which is generally a Ministry with legal competence over a specific sector of public administration.
- ProInversion, the Private Investment Promotion Agency of Peru, if required under the terms of the relevant PPP project agreement.
- Regulators with competence over the applicable economic sector, business activity or matter.
- Regional and local governments, including municipalities.

7.2 Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

Project documents, such as concession agreements or concession rights, are filed and registered with the relevant Public Registry, whether the registry of concessions for public infrastructure and public services or the registry of mining rights. Regarding financing documents, in the case of PPP projects and agreements subject to the competence of ProInversion, the latter is required to review the documents that support the permitted guaranteed indebtedness or financial closing. With respect to permitted guaranteed indebtedness or financial closing, the terms of the PPP agreement or concession agreement may require the prior opinion of the public entity in charge of the project (i.e. applicable Ministry) and/or regulator. In the case of co-financed PPP projects, the public entity in charge of the project is required to obtain the favourable opinion of the Ministry of Economy and Finance to create or modify a trust to administer the payments made under the co-financed PPP project agreement. In the case of concessions for public infrastructure and public services, the contracting authority may authorise the mortgage over the concession, which shall become effective upon its filing with the relevant Public Registry. Other security interests over proceeds and/or rights derived from a PPP agreement may be created as set forth in the relevant PPP agreement, including pledge over shares of the project company and other securities as permitted under Peruvian law.

7.3 Does ownership of land, natural resources or a pipeline, or undertaking the business of ownership or operation of such assets, require a licence (and if so, can such a licence be held by a foreign entity)?

Ownership of land does not require a licence. Use of natural resources, such as water, energy, minerals, oil and gas, requires the applicable concession rights, licences, authorisations and permits for the relevant project. Both local and foreign entities may apply and obtain concessions, licences, authorisations and permits for such purposes.

7.4 Are there any royalties, restrictions, fees and/or taxes payable on the extraction or export of natural resources?

Yes; however, these vary depending on the industry sector. For example, in mining, special taxation rules apply for mining royalties that levy the quarterly sales revenues, and there is a special mining tax over the operating profits from metallic resources, as well as a special mining contribution for entities that have entered into stability agreements with the government.

7.5 Are there any restrictions, controls, fees and/or taxes on foreign currency exchange?

No restrictions, controls, fees and/or special taxes apply for foreign currency exchange.

7.6 Are there any restrictions, controls, fees and/or taxes on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions?

Yes, certain fees and taxes may apply on remittances and repatriation of investment returns or repayment of loans.

7.7 Can project companies establish and maintain onshore foreign currency accounts and/or offshore accounts in other jurisdictions?

Yes, they can.

7.8 Is there any restriction (under corporate law, exchange control, other law or binding governmental practice or binding contract) on the payment of dividends from a project company to its parent company where the parent is incorporated in your jurisdiction or abroad?

No. However, it is customary for project companies to have certain contractual restrictions or limitations on the payment of dividends and distributions to shareholders as part of the covenants under the financing documents.

7.9 Are there any material environmental, health and safety laws or regulations that would impact upon a project financing and which governmental authorities administer those laws or regulations?

Peruvian environmental, health and safety laws and regulations establish certain requirements and obligations for individuals and entities in general, which would need to be met by a project company. No specific or special requirements are established under such laws and regulations with respect to project financing.

7.10 Is there any specific legal/statutory framework for procurement by project companies?

No. Generally, procurement by project companies may be done freely, via private agreements or bidding processes, whether privately or publicly, or as may be authorised under the applicable project documents.

8 Foreign Insurance

8.1 Are there any restrictions, controls, fees and/or taxes on insurance policies over project assets provided or guaranteed by foreign insurance companies?

No special restrictions, controls, fees and/or taxes apply on insurance policies over project assets provided or guaranteed

by foreign insurance companies. It is common market practice in large-scale project finance transactions in Peru for foreign insurance companies to participate in providing insurance over material project assets.

8.2 Are insurance policies over project assets payable to foreign (secured) creditors?

Yes, it is common practice in project finance to have the secured creditors, whether local or foreign, as an additional beneficiary or assignee of insurance policies over project assets.

9 Foreign Employee Restrictions

9.1 Are there any restrictions on foreign workers, technicians, engineers or executives being employed by a project company?

Foreign workers, technicians, engineers or executives employed by a project company are required to obtain a working permit before the Ministry of Employment or change their migratory status to allow them to work in Peru for the project company.

10 Equipment Import Restrictions

10.1 Are there any restrictions, controls, fees and/or taxes on importing project equipment or equipment used by construction contractors?

Importing of project machinery or equipment is subject to customs controls and payment of import duties before the Peruvian Tax and Customs Authority.

10.2 If so, what import duties are payable and are exceptions available?

In general, import duties are payable *ad valorem*, whether specific or based on a mix of *ad valorem* and specific import duties. The *ad valorem* rate is calculated pursuant to an applicable percentage (ranging from 0% to 11%) of the CIF (Cost, Insurance and Freight) value for the imported goods, while specific import duties are calculated based on units and volume. Exceptions may apply in cases where the Peruvian state has bilateral or multilateral agreements with other countries to eliminate or reduce import duties.

11 Force Majeure

11.1 Are force majeure exclusions available and enforceable?

Yes. The Peruvian Civil Code provides a general definition for *force majeure*, which applies when contracting parties do not define or allocate contractual risks related to *force majeure* and its effects. Parties to an agreement may freely agree on certain effects or obligations related to *force majeure* events, including agreeing on specific exclusions.

12 Corrupt Practices

12.1 Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

Yes. Peruvian law provides for criminal sanctions, administrative debarment or ineligibility, as well as economic fines that may apply to public officials and/or other individuals involved in such felonies. In the case of criminal penalties, these may range between four, six or more years in prison depending on the sanctioned act. Further, it is mandatory for a PPP agreement to include an anticorruption clause, otherwise such agreement would be null.

13 Applicable Law

13.1 What law typically governs project agreements?

Peruvian law governs PPP project agreements, as complemented by regulations on the promotion of private investment by means of PPP, sectoral laws and regulations applicable to the specific industry of the relevant project, and the applicable rules under the Civil Code. In respect of energy, mining, hydrocarbon, and telecom projects, among others, Peruvian law has special sectoral laws and regulations that govern the applicable concession rights, permits and authorisations. Also, specific promotion regimes may apply to certain projects, such as the promotion of the development and use of renewable energy sources.

13.2 What law typically governs financing agreements?

Financing agreements that are subject to Peruvian law are typically governed by the applicable provisions of the Peruvian Civil Code, the Securities Law and, in the case of financial entities authorised to operate in Peru, the General Law of the Financial and Insurance System and its regulations. Mortgages are subject to the applicable provisions under the Peruvian Civil Code, the law and regulations for promotion of private investment by means of PPP for mortgages over public infrastructure and public services concessions, and the General Mining Law for mortgages over mining rights. Pledges are governed by the Law on Movable Collateral and its regulations, and security trusts are subject to the General Law of the Financial and Insurance System and its regulations on trusts and trustee services. Submission to foreign law and jurisdiction is generally valid and enforceable under Peruvian law for certain project financing agreements, such as credit agreements, syndicated loan facilities, indentures, securities granted abroad, among others.

13.3 What matters are typically governed by domestic law?

Typically, the concession agreement or main project documents, as well as the permitting and regulatory regime in connection thereto, are subject to Peruvian law. In project financing, the security documents over assets and/or rights located in Peru or created pursuant to Peruvian law are generally subject to domestic law.

14 Jurisdiction and Waiver of Immunity

14.1 Is a party's submission to a foreign jurisdiction and waiver of immunity legally binding and enforceable?

Yes, submission to foreign jurisdiction and waiver of immunity is legally binding and enforceable in Peru. Generally, project companies, their sponsors, and guarantors in international project finance transactions submit to the jurisdiction in which their lenders or secured creditors are more comfortable and have experience litigating or settling similar cases.

15 International Arbitration

15.1 Are contractual provisions requiring submission of disputes to international arbitration and arbitral awards recognised by local courts?

Yes. These are recognised.

15.2 Is your jurisdiction a contracting state to the New York Convention or other prominent dispute resolution conventions?

Peru is a contracting state to the New York Convention, the Panama Convention, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, among others.

15.3 Are any types of disputes not arbitrable under local law?

Peruvian law provides that disputes may be submitted to arbitration on all free disposition matters, as well as on such matters authorised by law, treaties or international conventions.

15.4 Are any types of disputes subject to mandatory domestic arbitration proceedings?

PPP agreements are required to include arbitration as a dispute resolution mechanism; however, such arbitration may be domestic or international. Also, the Public Procurement Law sets forth that any disputes in connection with agreements for the acquisition of goods or services by public entities shall be subject to arbitration.

16 Change of Law / Political Risk

16.1 Has there been any call for political risk protections such as direct agreements with central government or political risk guarantees?

As a matter of public policy, the Peruvian government does not enter into direct agreements with third parties. Nonetheless, legal stability agreements may be entered into by the government and investors regarding tax, labour, and other matters.

17 Tax

17.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Interest payments to lenders domiciled in Peru are not subject to withholding income tax. In the case of foreign lenders, interest payments are subject to withholding income tax at a rate of 4.99% or, if certain specific conditions are not met, at a rate of 30%.

17.2 What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Reduced income tax at a rate of 4.99% applies to foreign lenders, provided that the cash proceeds are transferred to a bank account within the national financial system, the loan proceeds are used by the borrower in the ordinary course of business or to refinance existing debt, the debt service does not accrue an annual interest rate exceeding a specific threshold, and the lender and borrower are not related parties. No taxes apply for the effectiveness or registration of loans, mortgages or other security documents in Peru.

18 Other Matters

18.1 Are there any other material considerations which should be taken into account by either equity investors or lenders when participating in project financings in your jurisdiction?

Equity investors or lenders should consider: whether the project company is subject to a special promotion regime or regulations; the status of the project's permitting, capital contributions and commitments made by the sponsors; the status of any litigation and the track record of administrative sanctions on the project company group; the capabilities and knowledge of the project team working in Peru or similar countries in Latin America; and whether the project's location or area of influence is near communities that are opposed to the project.

18.2 Are there any legal impositions to project companies issuing bonds or similar capital market instruments? Please briefly describe the local legal and regulatory requirements for the issuance of capital market instruments.

Project companies may participate in the Peruvian capital markets via private or public debt or equity offerings. In the case of a public offering, a filing is required before the Peruvian capital markets authority, including all mandatory requirements and information from the project company and disclosure of its material rights, assets and liabilities.

19 Islamic Finance

19.1 Explain how *Istina'a*, *Ijarah*, *Wakala* and *Murabaha* instruments might be used in the structuring of an Islamic project financing in your jurisdiction.

This is not applicable to Peru.

19.2 In what circumstances may *Shari'ah* law become the governing law of a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *Shari'ah* or the conflict of *Shari'ah* and local law relevant to the finance sector?

This is not applicable to Peru.

19.3 Could the inclusion of an interest payment obligation in a loan agreement affect its validity and/or enforceability in your jurisdiction? If so, what steps could be taken to mitigate this risk?

Generally, no; interest payment obligations in loan agreements are customary provisions which are valid and enforceable in Peru. However, if such interest payment obligations contain non-customary undertakings which are contrary to public order or good morals, then enforceability in Peru may be jeopardised. It is advisable that a contractual obligation to be enforced in Peru is reviewed by legal counsel admitted to practise in said jurisdiction.



Luis Miguel Elias leads the infrastructure, project finance and mining practice of *Rebaza, Alcázar & De Las Casas*. He has vast expertise advising local and international project companies, sponsors, international banks and multilateral entities on the structuring of complex financings for the development of infrastructure, mining and energy projects. Luis Miguel has acted as independent legal expert on project completion issues and administrative law in the international investment arbitration case *Hydrika 1 S.A.C. and others v. Republic of Peru* (ICSID Case No. ARB/18/48). Other notable experience in infrastructure and project finance includes: the US\$975 million financing of the Chancay Megaport Project; the US\$217 million financing for the development of the Callao Multipurpose Port; the financing of digital infrastructure projects of the Stonepeak Infrastructure Partners' portfolio company Cirion Technologies; large-scale hydro and solar power plants; the terminal for the receipt, storage and dispatch of liquid fuels in Mollendo, Arequipa; the Constancia copper mine operated by Hudbay Minerals; and the Cerro Corona gold and copper mine operated by Goldfields La Cima, among others. In 2012–2013, Luis Miguel was an International Associate at Simpson Thacher & Bartlett LLP in New York, focusing on capital markets and corporate finance transactions in Latin America.

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Established in 2004, *Rebaza, Alcázar & De Las Casas* is a full-service leading firm in the Peruvian market. Our Firm is extensively recognised by prestigious international and local legal publications and reviews for our transactional, litigation and consulting practices. More than 20 years of experience fosters our projects and infrastructure department, as a key legal practice in the development and financing of the most significant projects in Peru in many industry sectors. We are recognised as market leaders and have participated alongside multilateral and government entities in the modernisation and implementation of international best practices for future PPP projects in Peru. We advise national and foreign clients on the structuring of complex projects, as well as on project development, investment, divestment and alternatives for risk mitigation. Our multidisciplinary team has relevant expertise in cross-border and international project finance, as well as a high degree of specialisation in regulatory matters and pre-litigation or litigation related to infrastructure projects.

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