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Info Card ELANBiz: How to Consolidate/Establish a Business in Peru^{1 y 2}

Updated by the expert in Peru on May 30, 2017

For additional information, use our [Ask the Expert \(www.elanbiz.org\)](http://www.elanbiz.org)

This Card is aimed to inform about the different modalities, company forms, partnerships or corporate issues in Peru in order to guide European investors about the different options that they can use if they want to establish a business in the country.

Introduction

Peruvian legislation guarantees the right to do business. In consequence, nationals or foreigners can develop any lawful activity without limitations other than those relating to public health, national security or environmental conservation. However, certain limitations apply, see: [Card ELANbiz: To invest in Peru](#).

Once effected the investment, it must be registered before the Agency for Private Investment Promotion of Peru (PROINVERSIÓN). [Registration is not mandatory, but it grants the right to](#) transfer abroad freely convertible currency, without prior authorization from any authority, the whole capital from investments, dividends or profits, among others; as well as the right to use the exchange rate more favourable.

¹ "The information contained in this Card is only general. For detailed, events and trade promotion as well as business contacts, please contact Commercial Offices of the Member States, European trade organizations and bilateral Chambers or Commercial offices in Peru".

² Main Sources: *Inversiones en Perú 2015*, publication of KPMG and *Guía de Negocios e Inversión en el Perú 2015/2016*, Cámara de Comercio de Lima (CCL). Economic Department of Chile in Perú - ProChile, *How to Establish in Peru. Guide to constitution and formalization of companies*, Ministry of Production. *How to invest in Peru?* Proinversión website.



Forms of Business Enterprise

Before beginning any business in the country, it is important for the foreign investor to decide whether to operate in the country through the establishment of a new company, a representative, a branch or a partnership contract. Choosing a new company, the investor should choose the type, form and the most convenient entity to its business model.

Peru laws recognize diverse business forms³. For the main corporate forms in detail, it is suggested to check in our platform, the answer to the question [ELANBiz FAQ: What are the most used corporate forms?](#). The Closed corporation (Sociedad Anónima Cerrada), Corporate (Sociedad Anónima), the branch and collaboration agreement contracts are the most commonly used business entities; the most important aspects of each:

1. Corporation / Anonymous society (Sociedad Anónima)

The partners limit their liability to the amount of their contribution. Shares, having partners as shareholders, represent the capital.

a. Main features:

- The most popular entity form among businessmen.
- Formed by a minimum of two shareholders (persons or legal entities, residents or not in the country). There is no maximum number of shareholders.
- Limited to corporate contribution. Share capital is represented by titles value negotiable (registered shares).
- Duration: Determined or Undetermined
- Transfer of shares must be recorded in the Company's Registration Book of Shares.

b. Capital and Shareholder Contributions

- At the time of incorporation it must have the capital completely subscribed (underwitted), and each subscribed share must be paid, at least in 25%.

³Sociedad Anónima-Corporation (including public and closed), limited liability company, Sucursal-branch of a foreigner company, joint venture, consortium, among others. The information contained in this Card is only referential, further information and detail in the General Corporation Law, [Ley General de Sociedades](#).



- A legal minimum amount of capital is not required. However, banks usually request a minimum amount of S / 1,000.00 to open an account (US \$ 300 approx.), this amount must be deposited in a checking account at the bank of choice of the investor and this amount will be able to be retired.
- Contributions could be made in national and/or foreign currency and in intangible technological contributions, as well as in physical or tangible goods or intangible technological contributions. The Board will review non-cash contributions.

c. Denomination

Can adopt any name. The name is followed by the words "Sociedad Anónima", or the abbreviation "SA" at the end.

d. Bodies of the company

- Shareholders' General meeting**, the supreme organ of society, composed of all shareholders. Each action gives entitlement to a vote.
- Board of directors** (mandatory), is elected by the Shareholders' General Meeting, consisting of a minimum of 3 people. Board members may or may not be shareholders, can also be a foreign director not domiciled.
- Management**, appointed by the Board. It is the legal and administrative representative of the company. It is authorized for the execution of ordinary acts and contracts for the social purpose of the company.

2. Close Corporation (Sociedad Anónima Cerrada/ S.A.C.)

The personal element predominates, within a scheme of capital society. It is the ideal alternative for family businesses.

a. Main features:

- Formed by a minimum of two shareholders (persons or legal entities, residents or not in the country), maximum number of shareholders 20.
- Limited to corporate contribution.
- The partners impose the right of preferential acquisition, unless otherwise provided in the bylaws.
- Cannot register its shares in the Public Registry of the Stock Market.



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- Transfer of shares must be recorded in the Company's Registration Book of Shares.
- Duration: Determined or Undetermined

b. Capital and Shareholder Contributions

- Same as Corporate (S.A.)

c. Denomination

Can adopt any name. The name is followed by the words "Sociedad Anónima Cerrada" ("Closed Corporation"), or the acronym "S.A.C." at the end.

d. Bodies of the company

Same as Corporate (S.A.) but Board of directors is optional (no mandatory).

3. Open Corporate/Public Limited Company (Sociedad Anónima Abierta S.A.A.)

Could be listed on the Lima Stock Exchange.

- CHARACTERISTICS: More than 750 shareholders.
- NAME: The name is followed by the words "Public Limited Company" or "S.A.A."
- SHARE CAPITAL: Represented by participations and must be paid each participation in at least 25%
- DURATION: Determined or Undetermined
- TRANSFER: Transfer of shares must be recorded in the Company's Registration Book of Shares.
- RESPONSIBILITY: Limited to corporate contribution

4. Limited Liability Company

- CHARACTERISTICS: From 2 to 20 partners
- NAME: The name is followed by the words "Sociedad Comercial de Responsabilidad Limitada" or "S.R.L."
- SHARE CAPITAL: Represented by participations and must be paid by each participant in at least 25%
- DURATION: Undetermined
- TRANSFER: Transfer of shares is formalized by public deed and must be registered with the Public Registry of Legal Entities.



- **RESPONSIBILITY:** Limited to corporate contribution

5. Branches offices

Establishment through which a company develops, in a place other than its domicile, certain activities included within its corporate purpose. In Peru, companies, domiciled or not in the country, can freely establish branches, and must register them in the Register of Legal Entities.

It lacks independent legal status of the principal. The branch must be endowed with permanent legal representation and enjoys autonomy of management in the scope of the activities assigned by the principal, in accordance with the powers it grants to its representatives.

Branches, agencies or other permanent establishments of foreign companies are considered domiciled in Peru for income tax purposes, in terms of income from Peruvian origin. The net income obtained by branches of foreign companies is taxed in the same way as the national companies; therefore, it is taxed at the rate of 30% on profit.

a. Main features:

- The principal company is responsible for the obligations of the branch, no contrary agreement is allowed.
- Does not have independent legal status of the principal company.
- It must have permanent legal representation and autonomy of management in the scope of the activities assigned to it by the principal company, in accordance with the powers it grants to its representatives.
- The establishment of branches is done through public deed.

The General Meeting of Shareholders of the principal company, decides the conformation of the branch in Peru, expressly stated, among others:

- Name of the main company followed by the name "Sucursal del Perú",
- Assigned capital,
- Activities that will be commissioned,
- Address of the branch,
- Appointment of at least one permanent legal representative in the country with the powers assigned to it and submission of the principal company to the laws of Peru,



- Certificate of validity of the principal company issued by the competent authority of the country of origin (Certificado de Vigencia de la Sociedad principal) and
- Certificate of Effectiveness of the Legal Representative (principal company).

6. Associative Agreements⁴

They create and regulate relationships of participation and integration in businesses or companies. This type of contract is not generated by a legal entity. They must be in writing and they are not subject to registration in the Public Registry Entity.

There are three forms of partnership agreements: the Partnership in Participation contract, the Consortium and the Joint Venture.

The resources destined to these contracts will be considered as foreign direct investment when the foreign investor is granted a form of participation in the production capacity, without this entailing capital contribution and corresponding to commercial operations of a contractual nature through which the Foreign investor provides goods or services to the receiving enterprise in exchange for a share in physical production volume, in the aggregate amount of sales or in net profits.

7. Representation Office

It is not a corporate entity, but allows developing commercial activities in the country. Although it will not have the prerogatives and possibilities of a company or branch, allows the initiation of business immediately. It do not have the prerogatives and possibilities of a company or branch, but allows to start commercial business immediately. To implement this alternative it is necessary to appoint a permanent attorney in the country.

In order to implement this alternative, it will be necessary to appoint a permanent attorney in the country with powers.

The power must be legalized before the Ministry of Foreign Affairs of Peru. If the power has been granted in a foreign language, it must be translated into Spanish.

⁴ [PROINVERSIÓN](#).



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It is important to point out that if a foreigner is appointed as a representative, he or she must necessarily have the immigration status of a resident, in order to be allowed to exercise the position without any restrictions. If the appointed representative have entered into Peru with a tourist visa and require to be appointed as a representative, he or she can apply for a special permit. Requirements for the National Migration Superintendence. [Requisitos en Superintendencia Nacional de Migraciones](#).

Advantages and Disadvantages of Companies and Branches⁵

a) Organizational structure

The same statutes or provisions of its principal company govern a branch of a foreign or national company, while its own social statute drawn up in accordance with the provisions of the LGS governs a subsidiary.

b) Legal responsibility

In the case of a branch, the responsibility for its acts reaches the principal company (this is due to the obligations of the branch, with no agreement to the contrary), while the acts of the subsidiary fall into it, with the risk of Shareholders or partners limited to the value of their participation in the share capital.

It should be mentioned that in the case of contracting with the State, since the branch is a territorial extension of an already existing foreign company, it can provide and offer the experience of its parent/principal company and be taken into account by the state entity when evaluating the Proposal of the bidders in the bidding.

For more information on how to choose the corporate form that best fits your business needs, we suggest reviewing [ELANBiz FAQ: What are the most used corporate forms?](#)

Organization Costs and Formalities

In general, expenses derived from the incorporation of the company oscillate:

- Notarial expenses are determined by the amount of capital and by the extension of the Public Deed.
- A registration fee, the cost is 3/1000 of the share capital.
- Other expenses, includes the registration of the board of Directors, payment of attorney's fees, notary, etc.

⁵ Source: *Inversiones en Perú 2015, publicaciones preparadas por KPMG.*



It is estimated that the incorporation of an average company could cost approx. S /. 1,500 (not including the amount of the capital stock, US \$ 450 approx.) Based on a minimum initial capital of S /. 1,000. (Approx. \$ 300).

For more information on how to choose the corporate form that best fits your business needs, we suggest reviewing ELANBiz FAQ: [How much time is required to create a company and how much does the process cost?](#)

a. Accounting Requirements

Companies are obliged to keep accounting books, which must be in Spanish and expressed in national currency, unless they are companies that have signed special contracts with the State and for that reason can keep their accounting in foreign currency.

Prior to its use, the accounting books must be legalized before a Public Notary, except the payroll book (Planillas), which will be legalized before the Ministry of Labour and Social Promotion, paying the corresponding fee in the Nation Bank (Official Bank).

b. Company incorporation

Prior to the incorporation of a company, it is important to verify that the legal name under consideration is not already registered in Peru. The incorporation procedure can be held directly or through a representative.

The procedure is simple and can be done electronically. The Minutes of Incorporation (Social Contract of the company), must contain, among others:

- Detailed information of the company (identification of founding partners, corporate purpose, statute, description of management positions).
- A lawyer must sign the minute.
- Opening of current account in the name of the company in local banking institution is mandatory.

The main steps for the incorporation of companies are:

- a. Choose the company form that best fits the needs of the business: Limited company, the commercial limited liability company, branch, joint venture, consortium, among others. Arrangements can be made directly or through a representative.



- b. Preparation of document of incorporation: Social contract of the company. It must contain detailed information of the company to be established (Identification of founding partners, corporate purpose, status, description of management positions). The incorporation document (minuta) must be signed by a lawyer.
- c. Opening a current account in the name of the company in a local bank to deposit the initial capital.
- d. Companies must be registered before the Tax administration (SUNAT).
- e. Important note for documents coming from abroad: All documents required for the incorporation procedure in Peru must be legalized and translated into Spanish by an official translator (powers, etc....), i.e. by a translator duly registered before the Ministry of Foreign Affairs of Peru (Cancillería).

The Minutes will be presented to the Notary Public who will submit it to Public Deed and prepare the documents for registration within Public Records (SUNARP).

In theory, the constitution of a company does not take more than 15 days, the practice indicates that the process, when involving foreigners, can take longer because of apostilles and legalizations abroad. According to the World Bank, on average 26 days.

There are numerous and varied sources of information on how to establish a company in Peru, we suggest to review:

[ELANBiz FAQ: What are the main steps to incorporate a company in Peru?](#)

[ELANBiz FAQ: Where can I get information on company incorporation in Peru?](#)

c. Can a non-resident incorporate a company in Peru?

Yes, but it requires a business visa. If you have entered to Peru with a tourist visa and need to incorporate a company or establish a branch in the country, you can apply for a special permit.

To know in detail the Requirements and conditions of the National Superintendence of Migration, we suggest to review [ELANbiz FAQ: Can a non-resident constitute a business company in Peru?](#)



d. Taxpayer Registration/Registro Único de Contribuyentes (RUC)

The National Superintendence of Tax Administration ([La Superintendencia Nacional de Administración Tributaria \(SUNAT\)](#)) is the administrative body for taxation in Peru. It has, among other functions, the one to register the taxpayers, granting them the certificate that proves their registration in the RUC. To obtain it, the following must be presented:⁶

- Testimony of Social Constitution, Registered.
- Receipt of water or electricity from the tax domicile.
- SUNAT RUC registration form
- Identification document in original of the legal representative.

e. Municipal License of Operation (Licencia Municipal de Funcionamiento)

Only in case you want to have physical location. It is not necessary to incorporate the company but it is mandatory if the company begins to operations in an establishment or office. It is the authorization to develop a certain commercial activity in a specific place of the company, and it is requested before the Municipality where the establishment or office is located.

Finally, we reiterate that this information aims to guide European investors about the different forms or corporate forms in force in Peru so that they can opt for the corporate form that best fits the needs that their business or economic activity require

⁶ If the process is carried out by a third person, it must present a simple power of attorney granted by the legal representative with notarized signature and the original identification document of the third person.



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