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# The Legal 500 Country Comparative Guides

## Peru

# BANKING & FINANCE

### Contributing firm

DLA Piper Perú



#### Sergio Barboza

Partner | sbarboza@dlapiper.pe

#### Nelly Espinoza

Senior Associate | nespinoza@dlapiper.pe

This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Peru.

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## PERU

# BANKING & FINANCE



### 1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

The Superintendence of Banking, Insurance and Private Pension Funds' Managers ("SBS", by its acronym in Spanish) is the main authority in charge of the regulation, supervision, and resolution of the entities of the Peruvian financial system. In addition, the Peruvian Central Bank (the "Central Bank") regulates and oversees banking entities in matters related to monetary policies and mandatory reserve requirements.

### 2. Which type of activities trigger the requirement of a banking licence?

According to Article 11 of Law No. 26702, the Peruvian Banking Law, only banks that are authorised by the SBS are allowed to perform banking activities in Peru, specifically taking deposits from the public and then using those funds to grant credits to third parties. Hence, the Banking Law states that the following activities require a banking licence:

1. To engage in activities similar to the purpose of the entities that are part of the financial system. In particular, to regularly receive money from the public, by way of deposits, loans or any other form, and in turn regularly disposing of such funds to provide credits, making investments or providing availability over such funds, under any contractual form;
2. To make announcements stating or suggesting the performance of transactions and services that are reserved for entities of the Peruvian financial system; and,
3. To use as part of their corporate name, on business forms and in any other means of publicity, any terms that may lead someone to believe that such entity is authorized to offer products and services that may only be carried out with the authorization and supervision of the SBS.

### 3. Does your regulatory regime know different licenses for different banking services?

Banking activities may be carried out by different kinds of entities of the financial system such as banks, financial institutions, municipal savings and credit institutions, rural savings and credit institutions, saving and credits cooperatives allowed to receive deposit from the public, and entities for the development of small and medium enterprises (although this last kind of entity cannot receive deposits from the public). Each kind of entity requires a specific banking license.

### 4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

The Banking Law establishes the operations and services that can be performed by each kind of entity of the financial system upon obtaining the operational authorization from the SBS. While banks can provide all banking activities (including the issuance of e-money), the other kind of entities of the financial system can expand their scope of activities by obtaining a complementary authorization. Nonetheless, entities of the financial system cannot perform activities reserved to capital markets intermediaries, private funds' managers, mutual funds' managers, and trustees in securitization transactions.

### 5. Is there a "sandbox" or "license light" for specific activities?

On August 29, 2021, the SBS published the SBS Resolution No. 2429-2021, Regulation for the temporary performance of activities under novel models. This resolution will become effective on February 22, 2022 and will provide 2 regimes for fully-operating entities and those which are in the process of obtaining their operational license. Thus, these regimens shall not apply

to entities that do not have some kind of prior authorisation from the SBS.

Both regimens may have a duration of up to 24 months. Their eligibility criteria demand that the innovative models (i) provide benefits to the costumers in terms of cost, time-frames or experience, (ii) contribute to the efficiency of the financial market, and (iii) contribute to the financial inclusion improving the access, deploy and quality of the services.

## 6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

Currently, there is no specific regulation regarding the issuance or custody of cryptocurrencies. In this sense, the Peruvian Central Bank and the SBS have issued several pronouncements emphasizing the risk of speculation that the use of cryptocurrencies entails, and that its value is neither backed by any central bank nor supported by any value reserve. Nonetheless, the Central Bank and the SBS are currently analysing its future regulation.

## 7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?

No. As mentioned in our answer to question 6, crypto assets have not been recognised by the Peruvian regulation.

## 8. What is the general application process for bank licenses and what is the average timing?

From February 2021 on a new licensing regulation is in place. To incorporate a bank, the following licenses must be obtained:

### 1. Organizational license

This authorization must be obtained prior to the incorporation of a banking entity. This process aims to assess the direct and indirect shareholders, directors and officers (fit and proper examination) as well as the viability of the future entity. The most important documents required are:

- i. Draft of the bylaws of the entity.
- ii. List of the future shareholders, including

information regarding their financial solvency (i.e. financial statements, list of their ultimate beneficial owners) and suitability (i.e. absence of criminal records, not being part the UN Security Council Lists, governmental authorizations to become shareholders of a Peruvian banking entity, when required, among others).

- iii. List of the future directors and the chief officers, including information regarding their suitability (i.e. curriculum vitae, absence of criminal records, not being part the UN Security Council Lists).
- iv. Schedule of the activities needed to request the operational license.
- v. Information of the economic group.
- vi. A market, financial and management feasibility study.
- vii. Certificate of deposit in favour of the SBS for an amount equivalent to 5% of the minimum capital amount required.
- viii. Questionary of self-evaluation.

Once the aforementioned documentation has been submitted, the future shareholders must publish a notice making of public knowledge (i) the filing of the organizational license request, (ii) the list of shareholders, their legal representatives, directors, and chief officers, (iii) a call to all interested parties in challenging the request to do so within 10 business days.

If no objections have been filed, or these have been dismissed, the SBS will proceed to evaluate the organization's request within a 120-days period. After such evaluation, the SBS must inform the Central Bank of the application submitted, so it can express its opinion within 30 days. Upon receiving the opinion of the Central Bank, the SBS will issue the corresponding resolution or communicate the denial of the request, within a period not exceeding 90 days.

### 2. Operational license

This process aims to evaluate if the bank is set to initiate operations. Within 1 year of obtaining the organizational license, the future bank must communicate to the SBS that it meets all the requirements to begin its operations. The main documents that must be submitted along with the communication are:

- i. copy of the public deed of incorporation duly registered in the Public Registries.
- ii. updated list of the shareholders, directors and chief officers.
- iii. manuals of policies and procedures required to operate.

- iv. outsourcing of critical functions' request.
- v. reports regarding the tests performed on the systems that will support the development of the operations.
- vi. Questionary of self-evaluation.

The SBS will evaluate the operational license request throughout a time-frame that must not exceed 120 days. For those purposes, the SBS will carry out a corroboration visit to determine whether the bank is prepared to start its activities. Once the verifications have been completed and within no more than 30 days after such verification, the SBS issues the corresponding authorization.

Finally, before the beginning of its operations, the entity must list its shares before the Lima stock exchange.

### 9. Is mere cross-border activity permissible? If yes, what are the requirements?

The Peruvian Constitution states that Peruvian citizens and residents are permitted to enter into any agreement and determine its content. However, only banking entities are authorized to perform banking activities in the Peruvian territory (particularly taking deposits from the public and then lending such funds to third parties). Moreover, according to Article 11 of the Banking Law, when banking activities are performed by individuals or legal entities not authorized by the SBS, such activities are considered illegal banking. Furthermore, illegal banking is presumed if acting from a physical location in Peru, a person or entity invites the public to deposit their funds or openly publicize banking services to the public, without carrying the authorization from the SBS.

Based on the abovementioned, cross-border activities are allowed when conducted on a one-to-one basis such as face-to-face meetings, individual e-mails, telephone conversations, and private written communications.

### 10. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

Banking activities may be carried out by different kinds of entities of the financial system such as banks, financial institutions, municipal savings and credit institutions, rural savings and credit institutions, saving and credits cooperatives allowed to receive deposit from the public, and entities for the development of small and medium enterprises (although this last kind of entity cannot receive deposits from the public).

In accordance with the Banking Law, all entities part of the financial system must be incorporated as a *sociedad anónima* (corporation), where the liability of the shareholders is limited to their contributions.

### 11. What are the organizational requirements for banks, including with respect to corporate governance?

As mentioned in our answer to question 8, entities of the financial system require to obtain organizational and operational licenses before initiating their operations. As part of those procedures, they must elaborate policies and establish processes that allow them to have an effective risk management. Hence, manuals related to the identification, assessment, and management of their potential risks (credit, liquidity, operational, compliance risks, among others) are required during the operational licensing phase.

Additionally, the following committees are needed:

- i. Risks committee
- ii. Audit committee
- iii. Remuneration committee

Likewise, before starting operations, the financial entities must appoint the individuals who will be responsible for the most important functions such as the risk officer, the internal auditor, the AML officer, etc.

### 12. Do any restrictions on remuneration policies apply?

Per the provisions of SBS Resolution No. 272-2017, banks must implement a remuneration system that comprehends policies, strategies, and procedures. Although there are no specific restrictions, the remuneration policies must be aligned with the long-term objectives of the entity, as well as with prudent risk-taking conduct. It must also be consistent with the bank's business strategy, its risk appetite, policies, and financial soundness

### 13. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

SBS Resolution No. 8425-2011, the Additional Capital Requirement Regulation, as amended in 2021, incorporates the Basel III framework.

The Peruvian financial entities must evaluate their capital adequacy to determine the additional regulatory buffer that they require based on the profile risk. Hence, the additional regulatory capital will be equal to the sum of the capital requirements calculated for each of the following components: (i) economic cycle; (ii) concentration risk; (iii) market concentration risk; (iv) interest rate risk in the banking book; and (v) other risks.

#### 14. Are there any requirements with respect to the leverage ratio?

SBS Resolution No. 3791-2021, Regulation on the leverage ratio, adapts our regulation to the Basel III international standards by establishing the methodology for the calculation of the leverage ratio. It is implemented with the aim of (i) limiting the excessive growth of assets of financial entities, and (ii) avoiding the destabilizing effects resulting from abrupt deleveraging throughout recessionary phases that may affect the financial system and the economy. As a result, entities have to report their monthly leverage ratio on a quarterly basis. This regulation will enter into force in June 2022.

#### 15. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

Tailored to the Peruvian market characteristics, and more conservatively, the SBS has implemented the Liquidity Coverage Ratio (LCR). Likewise, it is in the process of implementing the Net Stable Funding Ratio (NSFR), which will be adapted to the local characteristics.

Pursuant to SBS Resolution No. 9075-2012, Regulation for Liquidity Risk Management, entities of the financial system must comply with the following limits:

i. Liquidity Ratio in Local Currency

Liquid assets / short term liabilities in local currency  $\geq 8\%$ .

This limit is increased to 10% when the concentration of liabilities (of the 20 principal depositors with respect to the total deposits) in the previous month is higher than 25%.

ii. Liquidity Ratio in Foreign Currency

Liquid assets / short term liabilities in foreign currency  $\geq 20\%$ .

This limit is increased to 25% when the concentration in the previous month is higher than 25%.

iii. Liquidity Securities Ratio

$\geq 5\%$  of liquid assets

iv. Liquidity Coverage Ratio:

Liquidity coverage ratio in local currency  $\geq 100\%$

Liquidity coverage ratio in foreign currency  $\geq 100\%$

Whereas the liquidity coverage ratio must be complied on a daily basis, the liquidity ratio in local and foreign currency, as well as the liquidity securities ratio must be complied on a monthly basis.

#### 16. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

The entities of the financial system must submit the following financial information to the SBS: (i) audited annual financial statements, (ii) non-audited quarterly financial statements, and (iii) non-audited monthly financial statements.

Furthermore, as listed companies, the financial entities must publish their audited annual financial statements, non-audited quarterly financial statements and annual reports on the webpage of the SMV

#### 17. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

SBS Resolution No. 11823-2010, the Regulations for Consolidated Supervision of Financial and Mixed Conglomerates aims to assess risk-management faced by financial entities that are part of a conglomerate. The activities of the non-supervised companies that are part of the conglomerate are taken into account to the extent that they may have an impact on the financial situation of the financial entities of the conglomerate.

As for the particular requirements, the consolidated group must have a regulatory capital that allows it to

cover the risks it faces as a whole. Additionally, consolidated financial information must be filed before the SBS.

### **18. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?**

According to the Banking Law, all transfers of shares of an entity part of the financial system must be registered before the SBS. Moreover, any person or legal entity that, directly or indirectly, acquires 1% of the capital stock of a financial entity within 12 months, or that with said purchases acquires 3% of the capital stock, is obliged to provide information to the SBS regarding its identification, economic activities and the structure of its assets.

In addition, the acquisition of shares above 10% of the share capital, in favour of a single person or legal entity, directly or through a third party, requires the prior authorization of the SBS.

In terms of indirect transfers, if the shareholder of a financial entity that owns more than 10% of its capital stock is a legal entity domiciled in Peru, the shareholders of said company must obtain the prior approval of the SBS to assign any rights or shares of the aforementioned legal entity in a proportion higher than 10%. However, if the shareholder of a financial entity is a non-domiciled legal entity, it is only obliged to inform the SBS in the event of changes in its ownership in the proportion of the excess of the 10%, indicating the name of the shareholders of such non-domiciled legal entity.

### **19. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?**

The shareholders of a banking entity must be suitable and solvent. This means that their reputation is important to decide whether they will be acceptable by the SBS. Hence, those who have criminal records, have been included in any of the UN Security Council Lists, or declared insolvent, among other restrictions, are prevented from becoming shareholders.

Likewise, any person or company who is, directly or indirectly, the majority shareholder of an entity of the financial system cannot, directly or indirectly, hold more than 5% share capital of another entity of the financial system of the same nature.

Additionally, some public servants such as the Superintendent of SMV, the Superintendent of the SBS,

employees of the abovementioned institutions, and their spouses, cannot be shareholders of financial entities.

### **20. Are there specific restrictions on foreign shareholdings in banks?**

There are no restrictions on foreign shareholdings in banks. The Peruvian Constitution and the Banking Law states that national and foreign investments are subject to the same conditions. Hence, discriminatory treatments are not allowed under Peruvian law.

### **21. Is there a special regime for domestic and/or globally systemically important banks?**

SBS Resolution No. 8425-2011 was amended in 2021 to modify the regimen applicable to domestic systemically important banks. It considers that banks which pose a significant risk due to market concentration, either because of their great size, high interconnection, difficult substitution and high complexity, impose additional risks on the financial system. Hence, they must maintain an additional capital buffer due to market concentration risk. The evaluation to identify such entities is performed annually and is based on the calculation of an Indicator of Market Concentration Risk. The additional buffer requirement can be of up to 3% of the banks' risk-weighted assets.

### **22. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?**

In case of violation of the Peruvian banking regulation, the SBS may impose the following administrative sanctions depending on the severity of the infraction committed:

- i. warning
- ii. fines
- iii. temporary suspension of the operational license
- iv. withdrawal of the operational license
- v. temporary suspension of directors, chief officers, and employees
- vi. Disqualification of directors, chief officers, and employees for a maximum period of 5 years.
- vii. Permanent disqualification of directors, chief officers, and employees.

In addition, article 11 of the Banking Law establishes the prohibition of engaging in the business of the financial



system, especially receiving money from third parties and placing resources through credits, without the SBS authorization. In that case, the SBS is empowered to intervene in the premises of said companies. Moreover, illegal banking is a criminal act punishable with a prison term of up to 6 years.

### 23. What is the resolution regime for banks?

Pursuant to the Peruvian Banking Law, the SBS has the power to interrupt the operations of a financial entity in order to prevent, control and reduce the effects of a bank failure. It can decide on a temporary surveillance regime or a definitive intervention regime depending on how critical is the situation.

#### 1. Surveillance Regime

The decision to place a banking entity in a surveillance regime is made under strict reserve and confidentiality. During its duration, the shareholders, directors, and managers maintain their power and authority. However, the SBS can decide to compensate the entity's losses against current and accumulated earnings, premiums, legal and voluntary reserves, capital stock and subordinated debt. Moreover, the SBS may require the shareholders to make additional capital contributions or to obtain such capital contributions from third parties if shareholders do not satisfy the requirements. Likewise, the financial entity shall prepare a financial recovery plan and execute it upon the approval of the SBS.

It has a maximum duration of 45 days, which may be extended once for an identical time period if the events that led to the initiation of this regime continue. The surveillance regime shall be terminated when the SBS considers that the events that led to its initiation have expired, or upon the occurrence of an event that causes the SBS to submit the entity to an intervention regime.

#### 2. Intervention Regime

When an entity is placed in intervention, all its operations are suspended and the powers and authority of its shareholders become limited solely to matters related to the intervention.

This regimen has a maximum duration of 45 days, which may be extended for a second period of up to forty-five (45) additional days. Throughout an intervention regimen, the SBS may institute measures such as (i) cancelling losses by reducing reserves, capital and subordinated debt, (ii) segregating certain assets and liabilities for transfer to another financial institution, and (iii) merging the intervened entity with another acquiring

institution. Upon the end of an intervention, the SBS will proceed to dissolve and liquidate the financial entity except in the case of a merger.

During the intervention, the creditors are prohibited to:

- i. initiate any judicial or administrative procedure for the collection of any amount owed by the entity,
- ii. enforce any judicial decision rendered against the entity to secure payment of any of its obligations,
- iii. constitute a lien or attachment over any of the assets of the entity to secure payment of any of its obligations, or
- iv. make any payment, advance or compensation or assuming any obligation on behalf of the entity, with the funds or assets that may belong to it and are held by third parties, except for (a) set-off compensation payments that are made between regulated entities of the Peruvian financial system, and (b) set-off of reciprocal obligations arising from repurchase agreements and operations with financial derivatives entered into with local or foreign financial and insurance institutions.

### 24. How are client's assets and cash deposits protected?

The Deposit Insurance Fund is the entity in charge to provide deposit insurance coverage to depositors. Thus, all kinds of deposits made by individuals and non-profit entities and the demand deposits made by any type of legal entity are protected against bank failure. However, such coverage has a limit, which is updated on a quarterly basis according to the Wholesale Price Index. For the period between December 2020 and February 2022, the amount covered per depositor in each institution is up to approximately US\$ 30,046.

### 25. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered?

Peruvian regulation has not incorporated the bail-in tool in its bank resolution regimen.

### 26. Is there a requirement for banks to hold gone concern capital ("TLAC")?

The minimum capital ratio a bank is required to hold is 10%. Currently, there is no specific requirement to hold gone concern capital.

## 27. In your view, what are the recent trends in bank regulation in your jurisdiction?

The SBS is taking steps to provide the flexibility required to foster innovation in the financial system, which may lead to the establishment of a completely digital bank (challenger bank) in Peru and/or the participation of Peru in the multi-jurisdictional regulatory sandbox proposed by the Interamerican Development Bank.

Moreover, due to the delegation of legislative powers approved by the Congress, during the following months, the Government will be able to:

- i. Adequate the legal framework applicable to the composition of the regulatory capital to Basel III.
- ii. Simplify the licensing process and supervision of entities that do not receive deposits from the public.
- iii. Establish different oversight regimes based on the risks that entities pose to the stability of the financial system.
- iv. Facilitate the establishment of entities or offices whose operations are up to 100% digital.

## 28. What do you believe to be the biggest

## threat to the success of the financial sector in your jurisdiction?

Due to the economic effects of the pandemic over micro and small enterprises, entities specialised in microfinance present portfolio deterioration. This situation may affect the sound of the financial entities that provide financing to micro and small enterprises and, in this way, help to prevent a capital chain rupture.

However, owing to the role they play in the economy, the Government created a strengthening programme for entities specialised in microfinance. This programme provides the following schemes:

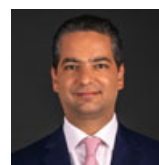
- i. Strengthening of municipal savings and credit institutions through the temporary participation of the State in their capital stock by means of preferred shares (tier 1 capital).
- ii. Strengthening of institutions specialised in microfinance through the temporary purchase of subordinated debt instruments.
- iii. Contribution of resources and/or granting guarantees to facilitate the corporate reorganizations of entities participating in the other schemes.

Therefore, there are alternatives that can be used to minimise the liquidity or solvency problems that entities specialised in microfinance may face in the future.

## Contributors

**Sergio Barboza**  
Partner

[sbarboza@dlapiper.pe](mailto:sbarboza@dlapiper.pe)



**Nelly Espinoza**  
Senior Associate

[nespinoza@dlapiper.pe](mailto:nespinoza@dlapiper.pe)

