

MERGER CONTROL REGULATION IN PERU: NOTIFICATION OF NEW TRANSACTIONS



1. ENTRY INTO FORCE

- **Law 31112 published on January 7, 2021** will come into force approximately 45 days after its publication in the official gazette, that is, on February 21, 2021. Any transactions closing after the Law comes into force will be subject to merger control in Peru.
- The Peruvian regime is **mandatory** and **has suspensive effects** (pre-closing).



M&A transactions in Peru that exceed specific economic thresholds need to be approved by the Peruvian Competition Authority (INDECOPI) prior to closing. If not approved, they will be considered void and INDECOPI may order their cancellation”.

2. THRESHOLDS

- All economic concentrations (i.e. change/transfer of control) require an authorization if they meet the following turnover thresholds:

Total value of either the assets or the annual sales (or gross revenue) in Peru in the previous financial year **equals or exceeds UIT 118,000** (approx. USD 144,000,000 or EUR 118,000,000).

Total value of the assets or the annual sales (or gross revenue) in Peru of **at least two** of the companies involved in the transaction in the previous financial year **equals or exceeds UIT 18,000** (approx. USD 22,000,000 or EUR 18,000,000).

- **Local effects.** Transactions that have no direct or indirect impact on the Peruvian market are exempt from the obligation to notify.
- **INDECOPI may review ex-officio any transaction that does not meet the thresholds** if it creates a dominant position or affects competition.
- The new regime includes other **exemptions**.

3. PROCEDURE

After a potential (non-binding) pre-notification phase, the formal procedure follows a standard structure:

PHASE I. Once the notification is deemed complete, the authority has up to **30 working days** (45 working days in the case of remedies) to clear the transaction or open a Phase II.

PHASE II. Up to **120 working days** (initial period of 90 working days, which can be extended by 30 additional days).

4. SANCTIONS – GUN JUMPING ENFORCEMENT

- The expectation is that the authority will enforce the gun-jumping rules from day one.
- INDECOPI's stance on carve-outs is not clear.
- All acts related to an unauthorised transaction will be considered void. The authority may also order the cancellation of the transaction.

Failure to notify may result in a fine of up to **UIT 1,000** (approx. USD 1,222,000 or EUR 1,000,000), provided it does not exceed 10% of the companies' Peruvian sales in the previous financial year.

At PPU and Uría Menéndez, we are constantly watchful of changes in merger control regulations in Peru. Please contact us for further information.



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