PERU

1. POPULATION

The National Institute of Statistics and Data Processing estimated that the population of Peru in 2012 was 30 million 136 thousand persons, out of which 28.1% (more than 8 million) live in the Province of Lima.

Peru is a millenary multicultural country, the cradle and center of important ancient civilizations, besides being the center of Spanish colonial domination. As a result of this, the composition of its population is very diverse. African, Asian and European peoples emigrated to Peru and co-existed with the native population that is mostly of Quechua origin.

The main official language of Peru is Spanish however, 51 original ethnic groups live in Peru and are grouped in 13 different language families.

2. POLITICAL ORGANIZATION

The official name is "The Republic of Peru". According to the Peruvian Constitution enacted in 1993, Peru is a democratic, social, independent and sovereign republic, organized by regions. Peru has a presidential system of government with three independent branches: The Executive, the Legislative and the Judiciary, in addition to autonomous constitutional bodies such as the National Elections Board, the Constitutional Court, the Central Reserve Bank and the Ombudsman's Office, among others.

Its Legislative branch is unicameral with 130 members. The country is divided into 24 regions and the Constitutional Province of El Callao, the city of Lima being the capital of the country.

Each regional government has a president and a regional assembly that will gradually assume competencies with the development of the decentralization process.

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4. CONSTITUTIONAL ACKNOWLEDGEMENT OF ENVIRONMENTAL RIGHTS

Article 2°, Section 22 of the Constitution of 1993 acknowledges the right to enjoy a balanced and suitable environment for the development of life. The violation of this right or the imminent risk of its infringement can be subject to legal actions for constitutional guarantees.

Furthermore, as established by Article 66° of the Constitution, renewable and non-renewable resources are the Nation's heritage and the State is sovereign in their development and concession to private persons.

As a general rule, in Peru, the responsibility for environmental damages is objective in other words, proof that the agent causing the damage acted with negligence or in bad faith is not required to hold him responsible.

Any person is entitled to file legal action for damages to the environment, as established in Article 143° of the General Environmental Law and in Article III of the Civil Procedural Code.

5. ENVIRONMENTAL REGULATORY AGENCY

The environmental regulatory agency of Peru is the Ministry of the Environment, an institution that designs, approves and executes the national environmental policy. The environmental sector comprises the National Environmental Management System, which incorporates the National Environmental Information System and the National System of Natural Areas protected by the State; as well as the management of the natural resources, in terms of biodiversity, climate change, soil management and other thematic areas to be established by law.

The following institutions form part of the environmental sector: Organismo de Evaluación y Fiscalización Ambiental (OEFA) (acronym Agency for Environmental Assessment and Control); Servicio Nacional de Áreas Naturales Protegidas (SERNANP) (acronym: National Service of Protected Natural Areas); Servicio Nacional de Hidrología y Meteorología (SENAMHI) (acronym: National Meteorology and Hydrology Service); Instituto Geofísico del Perú (IGP) (acronym: the Peruvian Geophysical Institute)and Instituto de Investigaciones de la Amazonía Peruana (IIAP) (acronym, the Peruvian Amazon Research Institute). Recently, the Servicio Nacional de Certificación Ambiental para las Inversiones Sostenibles (SENACE) (acronym, National Environmental Certification Service for Sustainable Investments) was created and shall begin operating in the year 2014. It shall be responsible for evaluating the detailed environmental impact studies, in other words, the environmental studies of large projects; and the implementation of a single window for administrative procedures.

At a sub-national level, the regions and municipalities possess environmental functions. It must be noted that Peru is a highly centralized country which has been undergoing a process for the decentralization of functions from the central government to the regions.

6. REGULATORY ENVIRONMENTAL SUMMARY

From a hierarchical viewpoint, the Peruvian Constitution of 1993 consolidates what we could call "the environmental substrate". In its Article 2°, Section 22 it enshrines the fundamental right of persons to "enjoy a healthy and ecologically balanced environment for the sustainable development of their life". In addition, Chapter II of Title III (Economic System) of the referred Constitution also briefly develops the matter related to the Environment and Natural Resources (Articles 66° to 69°).

In the year 2005, the General Environmental Law (Law 28611) was published as an instrument that lays the foundations for the legal environmental framework. The referred Law proposes the key rights and principles, outlines the scope of Environmental Management (instruments, institutionalism, etc.) and the responsibilities of each sector in relation to certain specific protected interests (i.e. natural resources) are assigned – or reaffirmed.

As a result of the publication of this Law, many other provisions were also published that specifically develop the key aspects of the Peruvian environmental legislation, such as Law 28245, Framework Law of the National System for Environmental Management (and regulations thereof); Law 27446, Law of the National System of Environmental Impact Assessment (and regulations thereof); and Law 29325, Law of the National System for Environmental Assessment and Control. It is with this last norm that the Agency for Environmental Assessment and Control (OEFA) is established as a specialized technical public institution in charge of controlling, supervising, evaluating, applying incentives and enforcing penalties in environmental matters.

Finally, from a strictly sectorial viewpoint, we may mention Law 29338, Law of Water Resources, which has a wider outlook and replaces the old pro-agricultural view of the General Water Law (Decree Law 17752). The General Law of Solid Waste – Law 27314, addresses the treatment, actions and responsibilities of persons who interact with solid (or semi-solid) waste, at different levels of government. Lastly, with regard to the protection and management of flora and fauna, we have Law 27308- Forestry and Wildlife Law (the validity of which was reinstated), and the Law on the conservation and sustainable development of the biological diversity (Law 26839).

7. ASSESSMENT OF THE ENVIRONMENTAL IMPACT STUDIES /ENVIRONMENTAL IMPACT STUDIES

According to the Law, all human activity that implies construction, works, services and other activities, as well as the public policies, plans and programs that may produce important environmental impacts, are subject to the Sistema Nacional de Evaluación de

Impacto Ambiental – SEIA (acronym the National Environmental Impact System), which is managed by the Ministry of the Environment – MINAM.

The projects developed by the SEIA are listed in the "List of Inclusion of Investment Projects". For the classification of the Projects, the Competent Authorities must request a technical opinion from other authorities to support their decision in their classification and, should a project not be included in the List or in an express legal provision, or when there are legal gaps, overlays or deficiencies, one of the functions of the MINAM is to identify the Competent Authority and/or determine the enforceability of the Environmental Certification.

The assessment of the environmental impact studies is carried out by sector, in other words, each Ministry, through its environmental body, is competent to assess and grant or reject environmental certification to the project. This rule shall no longer be valid once the SENACE begins operating, an institution that will be responsible for evaluating the detailed Environmental Impact Assessment, in other words the EIA for large projects.

The environmental certificate has a validity of 2 years if the project has not been initiated or, otherwise 5 years, after which period it must be updated.

8. AUTHORIZATIONS (AIR / USE OF WATER / EFFLUENTS / WASTE)

Peru's Environmental Law establishes licenses, authorizations or permits for the development of mining, energy or industrial operations. One of the main authorization instruments is the Environmental Certificate, which is granted after the assessment of the Environmental Impact Study. The environmental certificate is also a prerequisite to obtain essential licenses such as municipal construction or operating licenses or licenses to access water resources, among others.

Attention must also be given to the need to obtain permits related to the non-existence of archaeological remains in the project area and the measures that must be adopted to avoid affecting them.

Both the environmental certificate and archaeological permits are transferable, since they refer to the project itself; however, there are others such as the water rights that may be more difficult to transfer.

9. TRANSPORTATION OF HAZARDOUS MATERIALS AND WASTE

In Peru, the transportation by land of hazardous materials and waste is regulated by the Transport Sector.

Law N° 28256, Law on the Transportation of Hazardous Materials and Waste, and Regulations thereof, approved by Supreme Decree N° 021-2008-MTC, regulates this activity, which encompasses the production, storage, transportation and routes, handling, use, reuse, treatment, recycling and final discharge of these materials, in other words, it regulates their management.

Within this legal framework, the transportation service can only be rendered by companies duly registered and authorized to that effect and which are called Service Providers (EPS), who must have a contingency plan in place approved by the competent authority. Additionally, the laws establish that the Orange Book of the United Nations can also be used, since it contains regulations and technical specifications on the subject according to international standards.

Finally, it must be noted that supplementary and sectorial regulations on the specific manner in which hydrocarbons (type of hazardous material) are transported have been issued in the Regulations for the Transportation of Hydrocarbons (Supreme Decree N° 26-94-EM).

10. INTEGRATED SOLID WASTE MANAGEMENT

The purpose of solid waste management, regulated by Law 27314, General Law of Solid Waste and Regulations thereof, approved by Supreme Decree N° 057-2004-PCM, is the prevention of adverse environmental impacts and guaranteeing the protection of health.

This law defines solid waste as those substances, products or byproducts in a solid or semisolid condition, which their producer disposes of or is obliged to dispose of. It also refers to the waste management system that comprises several operations or processes: waste minimization, waste sorting at source and its development, storage, collection, transportation, treatment, transfer and final disposal.

The regulations establish the overall responsibility of the producer and of the persons who intervene during the process for the management of non-municipal waste, in other words, of the waste product of industrial or extractive activities, other than the household and commercial waste.

Besides recognizing the recycling process as a waste management alternative – specifically – its reuse -, the Law also proposes the reuse or recycling of solid waste as mechanisms to obtain a benefit from the item, article, element or a part thereof once again.

Radioactive waste is governed by its own special regulations issued by the Peruvian Institute of Nuclear Energy and not by the general regulations.

For the time being there are no specific objectives to reduce waste, except in the case of electrical and electronic waste, that have their own special regulations.

11. REGULATIONS OF THE INDUSTRIAL SECTORS:

11.1. MINING

The Ministry of Energy and Mines is the central authority in all matters related to mining activities (particularly for large and medium scale mining). Its purpose is to prepare and assess national policies and guidelines for the sustainable development of these activities.

The General Directorate for Environmental Affairs of the Ministry of Energy and Mines, created by Supreme Decree N°008-92- EM/SG, is the technical and normative body in charge of proposing and evaluating the environmental policy in the mining sector.

The mining policy adopted in Peru includes the availability of a legal framework that will grant legal security and guarantee the optimal development of the sector. Similarly, it aims to privilege the availability of and access to water, respecting the communities in the area, that is, to preserve the environment and maintain harmonious relations with the community.

On the other hand, Article 8° of the Preliminary Title of the General Environmental Law stipulates the cost internalization principle whereby the companies, in this case the mining companies, must bear the costs generated by risks or damages to the environment. Likewise, Article 9° of the same body of laws fixes the principle of environmental responsibility whereby the person(s) who causes damages to the environment is obliged to restore or repair said damages.

Furthermore, the mining sector has the Regulations on Environmental Protection in Mining Metallurgical Activities, approved by Supreme Decree Nº 016-93-EM, that stipulate the need to obtain environmental certification to develop this kind of activities. Moreover, maximum allowable limits have been approved for both effluents and mining and metallurgical emissions.

In the case of the mining industry, the supervision and control functions devolve on the OEFA, a specialized body that reports to the Ministry of the Environment.

The mining companies are obliged to inform the MINEM about the activities developed during the previous year in a report entitled DAC or Declaración Annual Consolidada (acronym Consolidated Annual Statement), designed to identify and locate the mining rights, the investments made, the statement of accreditation of the minimum production, etc.

Likewise, pursuant to the General Mining Law, all persons engaged in mining activities are obliged to present the necessary information each month to prepare the mining statistics and surveys.

11.2. PETROLEUM AND GAS

The Dirección General de Asuntos Ambientales Energéticos (acronym The General Directorate of Environmental Affairs for Energy), hereinafter “DGAAE”, of the Ministry of Energy and Mines, is the technical body in charge of promoting the implementation of measures for the conservation and protection of the environment, related to the development of hydrocarbon activities.

In this regard, according to Supreme Decree N° 015-2006-EM, Regulations for Environmental Protection in Hydrocarbon Activities, prior to the commencement, expansion or modification of hydrocarbon exploitation and exploration activities, the license holder must furnish the DGAAE with the corresponding Environmental Study that

shall be mandatory after its approval. The environmental studies shall be classified in (i) Environmental Impact Statement (DIA), (ii) Environmental Impact Study (EIS), (iv) Semi-detailed Environmental Impact Study (EIS-sd) and (v) Environmental Management Plan (EMP); depending on the environmental impacts produced as a result of such activities.

Regardless of the foregoing, there are additional environmental obligations that the license holder must meet, such as the fulfillment of the standards related to water, land, air resources, among others.

11.3 POWER SUPPLY

The Electricity Concessions Law, approved by Decree Law N° 25884, establishes that the development of electrical activities are divided into (i) generation, (ii) transmission and (iii) distribution and commercialization, that may not be carried out by the same license holder or by whoever directly or indirectly exercises their control. In this regard, it establishes that there are two kinds of formal documents that the Ministry of Energy and Mines grants to those who wish to develop electrical activities and which are the concession, that may be temporary or permanent, and the authorization.

Within this context, according to the Regulations on Environmental Protection in Electrical Activities, approved by Supreme Decree N° 029-94-EM, an Environmental Impact Study must be submitted to and approved by the General Directorate of Environmental Affairs for Energy of the Ministry of Energy and Mines in order to develop power supply and transmission activities.

Furthermore, pursuant to the Regulations, those persons applying for concessions and authorizations must consider the potential consequences of their activities on the natural resources, such as the quality of the water, air and soil. In this context, according to Article 35° of the referred Regulations, electricity projects shall be designed, built and operated in such a manner so as to avoid affecting or producing adverse impacts on the environment.

12. CONTAMINATED AREAS (ENVIRONMENTAL LIABILITIES)

Article 30° of the General Environmental Law stipulates that the license holders of contaminating activities are obliged to execute plans, both present and future, for decontamination and the treatment of environmental liabilities produced as a result of their projects or.

Through two special laws, Peru has specifically regulated the environmental liabilities produced by mining activities (Law Nº 28271) and hydrocarbon exploitation activities (Ley Nº 29134). In both cases, the producer and ultimately the State are responsible for the remediation measures.

It must be noted that the remediation activities require the prior presentation and approval of the respective plan by the competent environmental body.

The national environmental quality standard for soil (Supreme Decree N°02-2013-MINAM) was approved on March 23, 2013, a standard essentially created to legally determine the environmental condition of the soils in the country. As in the case of other standards of its type, this standard is a mandatory point of reference for the preparation of environmental policies, plans and instruments as well as the environmental impact studies.

13. CLIMATE CHANGE

The Dirección General de Cambio Climático, Desertificación y Recursos Hídricos (acronym "General Directorate of Climate Change, Desertification and Water Resources"), hereinafter "DGCDRH", is the body of the Vice-Ministry for the Strategic Development of Natural Resources of the Ministry of the Environment, in charge of formulating national policies and standards for the management of climate change, in coordination with the different sectors involved through the National Commission on Climate Change.

In this regard, the DGCDRH is the national authority appointed to meet the commitments assumed in the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity (CBD) and the Convention to Combat Desertification and Drought; in addition to the Kyoto Protocol (within the context of the UNFCCC), ratified by Legislative Resolution N° 27824 dated September 10, 2002 and the Cartagena Protocol on Biosafety (with the framework of the CDB), ratified by Supreme Decree N° 022-2004-RE dated February 27, 2004.

In October of 2003, the DGCDRH approved the National Strategy for Climate Change (NSCC) that establishes the bases of all the policies and activities related to climate change developed in Peru. Its main objective consists in reducing the adverse impacts of climate change, based on the studies of the vulnerability of the most threatened areas and/or sectors where projects for the adaptation and control of local contaminating greenhouse gas emissions shall be implemented, through renewable and efficient energy programs in the different productive sectors.

14. CONTROLLED CHEMICAL INPUTS

Legislative Decree Nº 1126, establishes the system for the registration and control of those chemical inputs used in the production of illegal drugs.

The tax authority (SUNAT- Superintendence for Tax Administration) is responsible for implementing, developing and keeping the Register, as well as for controlling the Controlled Properties. The referred control includes, among others, the entry, stay, transportation or exit of Controlled Goods, as well as the distribution, to and from the customs territory and nationwide. Similarly, the SUNAT shall be responsible for controlling the documentation containing information on the use of the Controlled Goods and for applying the required administrative sanctions.

Finally, whoever renders services for the transportation of Supervised and/or Controlled Goods must also be registered in the referred Register.

15. ENVIRONMENTAL LIABILITY (CIVIL, ADMINISTRATIVE, CRIMINAL)

The Peruvian Environmental Law recognizes the autonomy of the civil, administrative and criminal liability, in Article 138º of the General Environmental Law, and prohibits double jeopardy.

As a general rule, liability for environmental damages is objective, if the ofender conducts an environmentally risky or hazardous activity, as established by Article 144º of the General Environmental Law. In all other cases, responsibility shall be subjective, in other words, the negligence or bad faith of the agent must be accredited. It must be noted that in this case, the agent is the person who must accredit that he acted with due diligence.

Administrative liability is established by an independent specialized body attached to the Environmental Sector, called the OEFA, and which may imply the enforcement of coercive, corrective measures and monetary penalties for a maximum of 40 million US Dollars. At present, the OEFA is responsible for the control of the mining and hydrocarbon sectors as well as the cement production, leather tanning, beer brewing sectors, among others.

The Peruvian Criminal Code (Legislative Decree 635) recognizes criminal environmental identities. In order to determine their configuration, the General Environmental Law requires a written and duly justified report from the environmental authority, before the District Attorney or the Prosecutor in charge of the preliminary investigations during the course of the criminal proceeding can issue his opinion.

The criminal types considered are those related to overall contamination, the establishment or management of unauthorized solid residue disposal sites, the illicit trafficking of hazardous waste, illegal mining or financing thereof, among others.

16. REPORTING OF ENVIRONMENTAL EMERGENCIES

Through the Ministry of the Environment, the State has the power to declare a situation of environmental emergency, in the face of a sudden and important event, pursuant to the provision of Law 28804 and Regulations thereof (Supreme Decree Nº 024-2008-PCM).

The OEFA has mandatory procedures in place (Resolution Nº 018-2013-OEFA/CD) that regulate the activities under its control, to report environmental emergencies within 24 hours of their occurrence and to prepare and deliver a report within a period of 10 business days.

The reporting of Emergencies related to Hydrocarbon Commercialization Activities is also regulated by Resolution Nº 169-2011-OSCD.

17. ENVIRONMENTAL INCENTIVES (FOR CONSERVATION OR CLEAN ENERGY)

Among the environmental management instruments, the General Environmental Law contemplates the economic and regulatory incentives for the promotion of good and clean production practices

Although the General Environmental Law prescribes that the design of the tax framework includes the environmental policy goals, the real confirmation of this regulatory position continues to be a pending task.

We can find some examples of environmental incentives in the Law of Government Contracting and Procurement and in the promotion of power generation from renewable energy, that is regulated by Legislative Decree Nº 1002, on the promotion of investment for the generation of electricity with the use of renewable energies and regulations thereof, approved by Supreme Decree 012-2011-MINEM.

Furthermore, in addition to its supervisory, control and penalizing functions, the OEFA is also in charge of granting incentives with the aim of guaranteeing the fulfillment of the environmental laws and of the environmental management instruments, by natural or legal persons, nationwide, within the framework of the National System for Environmental Management.

18. Environmental Financing and Insurance

The regulations establish the mandatory purchase of insurance to cover the risks derived from the transportation of hazardous materials and waste (Supreme Decree 021-2008-MTC). Furthermore, the solid waste service providers and trading companies must hire an insurance policy to cover environmental and third party damages (LAW 27314 and Regulations thereof).

Similarly, the plans for the closure of mining activities must guarantee their financing by granting the guarantees stipulated in the special mining regulations.

19. BIODIVERSITY

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19.1. PROTECTED NATURAL AREAS

The Peruvian law, through the Protected Natural Areas Act (LANP) of 1997 and the Master Plan for Protected Natural Areas adopted in 1999 and updated in 2009[1], define protected natural areas as continental and/or marine spaces of the national territory expressly recognized and declared as such, including their categories and zoning, to preserve biodiversity and other related values of cultural, scenic and scientific interest.

The protected natural areas constitute the National System of Areas Protected by the State (SINANPE), whose management is integrated by public institutions of the central government, the regional governments and the municipalities. SINANPE's governing body is the National Service of Natural Areas Protected by the State (SERNANP), which has three levels of areas: the national administration areas, divided into nine categories belonging to SINANPE; the regional conservation areas[2]; and the private conservation areas[3]. These last two have the purpose of complementing the SINANPE areas.

The nine categories of the areas belonging to SINANPE have, in turn, a classification based on compatible uses: indirect use areas and direct use areas. Indirect use areas comprise the national parks, national sanctuaries and historical sanctuaries. Extraction of natural resources or modifications and alterations to natural environment is not allowed in these areas. By contrast, exploitation or extraction of natural resources is allowed in direct use areas provided it is carried out in the areas and of such resources as defined in the master plan for the respective area.

Use and conservation of renewable natural resources –which do not include minerals- existing within protected natural areas are governed by the LANP rules and its regulation; as well as by the legislative decree that established specific measures to ensure heritage of these areas[4].

19.1.1. Protected natural areas and links with industry

Even though the competent environmental authority for industry is the respective ministry, the potential impact on a Protected Natural Area by an investment project determines the intervention of SERNANP. Pursuant to the LANP Regulation, the execution of industrial

[1] Approved in 2009 by Supreme Decree Nº 010-99-AG (11.Apr.1999) and updated in 2009 by Supreme Decree Nº 016-2009-MINAM (03.Sept.2009).
[2] Directive for evaluation of proposals for the establishment of Regional Conservation Areas has been approved by SERNANP with Presidential Resolution Nº 205-2010-SERNANP (27.Oct.2010).
[3] Article 5 of the LANP Regulation, amended by Article 2° of Supreme Decree Nº 015-2007-AG (15.Mar.2007).
[4] Legislative Decree Nº 1079 (28.Jun.2008) and its regulation, approved by Supreme Decree Nº 008-2008-MINAM (13.Dec.2008).

activities in these areas depends on their category and zoning and requires SERNANP authorization[5]. Due to this, approval to the EIS of an investment project within a Protected Natural Area and its buffer zone requires SERNANP favorable technical opinion.

19.1.2. Buffer zones

The LANP defines buffer zones as those peripheral to the protected natural areas which by their nature and location require special treatment to ensure conservation of the area.

Therefore, activities carried out in the buffer zones should not endanger fulfillment of the area objectives[6], and the type of activities that can be carried out in these areas as well as the extent corresponding to each buffer zone must be defined by the Master Plan[7] for the respective protected natural area.

19.1.3. Rights prior to the creation of protected natural areas

The basic criterion regarding the existence of rights prior to the creation of a protected natural area is established by the Framework Law for the Growth of Private Investment[8], as follows: the establishment of protected natural areas has no retroactive effects nor affects the rights acquired before their creation. It should be understood, therefore, that the holder of a right (the case of a mining concession or a forest concession, for example) granted before the creation of a protected area comprising the right may exercise its right. However, the exercise of this activity and other rights acquired before the establishment of a protected natural area shall be performed, always, in accordance with the objectives and purposes for which the protected natural areas were created[9]. This means that those activities carried out within the protected natural areas shall comply with the conditions and restrictions imposed by the category and zoning of the respective area.

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[5] Supreme Decree Nº 004-2010-MINAM (30.Mar.2010) specifies the obligation to request prior binding technical opinion in defense of the natural heritage of the Protected Natural Areas.
[6] Article 25 of the LANP, Law Nº 26834 (04.Jul.1997).
[7] Pursuant to article 37° of the LANP Regulation, Supreme Decree Nº 038-2001-AG, the Master Plan is the highest level strategic planning document for the management of the protected natural area. Public and private entities and individuals pertaining to the protected natural area are involved in its elaboration.
[8] Article 54 of the Framework Law for the Growth of Private Investment, approved by Legislative Decree Nº 757 (13.Nov.1991).
[9] Article 5 of the LANP, Law Nº 26834 (04.Jul.1997).

Categories of protected natural areas

Articles 21° and 22° of the LANP, Law Nº 26834

Indirect use areas Allow scientific non-manipulative research, recreation and tourism, in properly designated areas and managed for those purposes. Extraction of natural resources, or modifications and alterations to the natural environment is not allowed in these areas.	***National parks***	Areas that constitute representative samples of the natural diversity of the country and its large ecological units. Ecological integrity of one or more ecosystems, associations of wild fauna and flora and the successional and evolutional processes, as well as other related scenic and cultural characteristics, are protected as intangible in these parks.
	National sanctuaries	Areas protecting as intangible the habitat of a species or a flora and fauna community as well as natural formations of scientific and scenic interest.
	Historical sanctuaries	Areas protecting as intangible the spaces containing relevant natural values and which constitute the environment of sites of special national significance for containing samples of monumental and archaeological heritage or for being places where important events of the country's history took place.
Direct use areas *Allow use or extraction of resources primarily by local populations in those areas and places and of those resources as defined by the area management plan. Other uses and activities that are carried out must be consistent with the objectives of the area.*	***Scenic reserves***	Areas protecting environments whose geographical integrity shows a harmonious relationship between man and nature; harboring important natural, aesthetic and cultural values.
	Wildlife refuges	Areas that require active intervention for management purposes to ensure maintenance of habitats, and also to meet the particular needs of certain species, such as breeding sites and other sites critical for restoring and maintaining populations of such species.
	National reserves	Areas intended for the conservation of biological diversity and sustainable use of the resources of flora and fauna, aquatic or terrestrial. Commercial use of the natural resources under management plans approved, monitored and controlled by the competent national authority is allowed.
	Communal reserves	Areas intended for the conservation of the wild flora and fauna for the benefit of the nearby rural communities. Use and commercialization of resources shall be made under management plans approved and monitored by the authority and conducted by the beneficiaries themselves. Communal reserves can be established on lands for agricultural, cattle, forest or protection major uses and on wetlands.
	Protection Forests	Areas established for the purpose of ensuring protection to the upper or catchment basins, the rivers banks and other waterways and, in general, to protect the fragile lands against erosion, if necessary. Use of resources and development of those activities that do not endanger vegetation of the area are allowed.
	Game preserves	Areas intended for the exploitation of wildlife through the regulated practice of sport hunting.

19.1.4. Compatibility and Prior Technical Favorable Opinion

One of the most relevant legal aspects regarding the possibility of developing an investment project within the protected natural areas is to analyze the compatibility between the proposed activity and the legal nature and natural conditions of such area. If it is concluded

that compatibility exists, SERNANP should issue a directive stating the legal and technical conditions to carry out the proposed activity[10]. Thus, compatibility is determined according to the characteristics of both, the proposed industrial activity and the ecosystem comprised within the Protected Natural Area.

This compatibility analysis expressed later in the "Compatibility assertion" is one of the two expressions of the "Prior Binding Technical Opinion" issued by SERNANP regarding the granting of rights to use natural resources within protected natural areas and also on the EIS of projects proposed to be carried out within these areas. The other expression is the so-called "issuance of the Prior Favorable Technical Opinion".

The "Compatibility assertion" contemplated in Article 27 of LANP is a "Prior Binding Technical Opinion" on the concurrence of an activity proposal with respect to the conservation of the Protected Natural Area according to the category, zoning, Master Plan and the objectives for the creation of such area. This "Compatibility assertion" is requested to SERNANP by the competent authorities prior to the granting of rights to use natural resources within a protected natural area.

On the other hand, the "issuance of the Prior Favorable Technical Opinion" according to Article 28 of LANP is the "Prior Binding Technical Opinion" on the EIS of an investment project proposed to be carried out within a protected natural area. That is, the relevant EIS shall only be approved with SERNANP "Prior Favorable Technical Opinion".

19.2. PROTECTION OF WILD FAUNA AND FLORA

In Peru the Forestry and Wild Fauna Law[11] is the norm governing forest resources and fauna. In addition, Peru has signed the Convention on International Trade in Endangered Species of Wild Flora and Fauna - CITES[12], being thereby bound to protect certain species of wildlife from over-exploitation by international trade.

19.2.1. Wild fauna

In Peru, there is already a suitable legal framework for the protection of this natural richness, a framework that began to take shape between 1940 and 1950 with the prohibition to hunt the American crocodile or alligator in the northern coast rivers of the country, as

[10] Article 116 of LANP Regulations, Supreme Decree Nº 038-2001-AG (26.Jun.2001), amended by Supreme Decree Nº 003-2011-MINAM (16.Feb.2011).).

[11] Law Nº27308 (16.Jul.2000). The Regulation of the Forestry and Wild Fauna Law was approved by Supreme Decree Nº014-2001-AG (09.Apr.2001).

[12] Approved by Law Nº 21080 (21.Jan.1975). By means of Supreme Decree Nº 030-2005-AG (10.Jul.2005) the "Regulation for the Implementation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) in Peru" was approved.

well as the vicuña (*vicugna),* chinchilla and guanaco[13]. Fauna species threatened with extinction are protected through classifications[14] according to the degree of risk such species are exposed to, species which are also protected by the Criminal Code [15].

19.2.2. Wild flora

With respect to wild flora[16], it is important to note that there are specific rules to protect forests against extractive activities. Such is the case of the provisions contained in the Forestry and Wild Fauna that provide that all those engaged in extractive activities in forests or wooded areas require authorization to carry out deforestation activities in those areas[17].

19.3 USEFUL LEGAL INSTRUMENTS FOR PRIVATE CONSERVATION

Legal mechanisms for the conservation of the biodiversity existing in Peru are basically encompassed in three legal bodies: 1997 LANP; Law on the Conservation and Sustainable Use of Biodiversity, also of 1997; and the Forestry and Wild Fauna Law of 2000. We would like to draw attention to two legal conservation instruments that could be very useful for mining companies even though not specifically designed to be used by them. Although we will address each of them in detail, note that the Conservation Concession is an instrument applicable to State lands while the Private Conservation Area is an instrument applicable to private property lands.

Before addressing both of them, it is worth mentioning that those who elaborated this legal framework gave special attention to ensure that indigenous people rights were not affected. Moreover, the intention was that most of these conservation mechanisms were implemented with the participation of local people and for their benefit.

19.3.1. Conservation Concessions

Together with the development of the concession legal instrument, Peruvian legislation has also been enriched in aspects related to the conservation of biodiversity in both, regarding the National System for Protected Natural Areas and regarding the conservation activities carried out by individuals. These two developments, the concession, within the

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[13] MOROTE, María Esther. Wild Fauna in Peru. Analysis and proposals. Page 113. Sociedad Peruana de Derecho Ambiental and MacArthur Foundation. 2001. Lima..

[14] Ministry Resolution Nº 1082-90-AG/DGFF classified wild fauna species in several protection categories. Afterwards, Supreme Decree Nº 013-99-AG (19.May.1999) prohibited hunting and extraction of wild fauna species with commercial purposes that were not authorized by Inrena and established the current classification.

[15] Articles 308- A, 308- B, 308- C and 309 of the Criminal Code, Legislative Decree Nº 635 (08.Apr.1991), amended by Law Nº 29263 (02.Oct.2008), define illicit trafficking in protected species of wild flora and fauna as a crime

[16] Classification of endangered species of wild flora has been established by Supreme Decree 043-2006-AG (13.Jul.2006).

[17] Article 17 of Forestry and Wild Fauna Law Nº 27308 (16.Jul.2000) and Article 76 of the Regulation of the Forestry and Wild Fauna Law, Supreme Decree Nº014-2001-AG (09.Apr.2001).

Administrative Law on the one hand, and the conservation instruments on the other hand, have concurred and have generated the legal instrument for the Conservation Concession.

Created in Peru by the Forestry and Wild Fauna Law[18], the conservation concession is the legal instrument whereby the State grants to individuals the right to carry out conservation activities on State lands. The concession is gratuitously granted and up to a 40-year extendable term. Pursuant to the relevant rules, nothing prevent a company from requesting the State the granting of a conservation concession provided it proves, among other requirements, that it has the necessary capacity and suitability to be a concessionaire or that it has established strategic alliances with institutions dedicated to conservation activities that are duly capable to do so.

As in mining and forestry concessions, through which the State grants the right to use the existing underground mineral resources, which are National Heritage, in the conservation concession a right is also granted over National Heritage properties. However, this right is not for extracting natural resources but for their conservation. The concession agreement grants the petitioner the necessary legal certainty for investment, describing in details its rights and obligations as well as the procedure for solving any controversy that may arise in connection with the agreement.

19.3.2. Private Conservation Area

Same goals are achieved in both, the private conservation areas[19] and the conservation concessions, but the procedure for their recognition and the legal relationship between the owner and the public administration are substantially different. This is because while the conservation concessions are granted over State lands, the private conservation areas are recognized over private property lands. For this purpose, the property must meet the necessary characteristics for its recognition.

Private conservation areas are not established on a permanent basis, though their duration period shall not be less than 10 years, term that can be renewed as in the conservation concession. The declaration of a property as a private conservation area must be recorded with the respective Real Property Registry; therefore, the conditions imposed on the use of the area can also be binding to the subsequent purchasers of the property or of other rights over the property.

[18] Ministry Resolution Nº 0566-2001-AG (07.Jul.2001) approved the complementary provisions for granting Conservation Concessions.

[19] Recognized by LANP, Law Nº 26834 (04.Jul.1997). Resolution Nº 144-2010-SERNANP (14.Aug.2010) approved the new Complementary Provisions for the Recognition of Private Conservation Areas.