

INFOCARD ELANBiz

Incorporating/Establishing a Company in Peru¹

Last updated in December 2019.

For additional information, use our [Ask the Expert](#) service.

This infocard aims to provide a general understanding of the different methods of business incorporation in Peru.

Introduction

The Peruvian legislation guarantees the right of freedom of association, that is, the right to freely choose how to carry out one's business, with the exception of specific regulations such as those applicable to the financial system (see [ELANbiz: Invest in Peru](#)). As regards new companies, and based on **the General Law on Companies (Law N° 26887)**, the foreign investor frequently chooses to incorporate a corporation, establish a branch or even conclude a partnership agreement².

The Corporation / Limited Liability Company (Sociedad Anónima)

It is the most widely used corporate form, and attorneys know it as the "standard corporation" considering that, beside it and according to the Peruvian law, there are two special forms of corporation: the Closely-Held Corporation (S.A.C.) and the Publicly Traded Company (S.A.A.). Among the main characteristics of the corporation, the following can be mentioned:

Limited liability	Shareholders can only be held liable up to the amount of their contribution.
Share capital	There is no mandatory minimum, except for certain regulated financial activities. At the time of incorporation, at least 25% of the share capital must be paid for and deposited in a local bank.
Shareholders	Mandatory minimum of two shareholders, whether natural or legal persons.
Shares	They may be freely transferred unless agreed otherwise.
Contributions	They can be cash contributions or in the form of tangible or intangible assets, in which case the board of directors must review and approve an appraisal report.
Operation	The governing bodies are the General Shareholders' Meeting, the Board of Directors and General Management.
General Shareholders'	- Shareholders must meet at least once a year to approve the financial

¹ The information provided in this document is of a general nature only. For more detailed information, events and commercial trade offers as well as commercial business contacts, please contact the Commercial Offices of the Member States and the bilateral chambers of commerce in Lima.

² A simpler method of implementation is the [representation office](#), which can be incorporated by means of a power of attorney granted by the foreign company. This method is commonly used to conduct preparatory acts that do not involve carrying out economic activities in Peru.



Meeting	<p>statements of the company.</p> <ul style="list-style-type: none"> - Their main faculties include (i) the election of the board of directors, (ii) amendment of the bylaws, and (iii) the approval of the disposal of assets whose value exceeds 50% of the share capital. - The law establishes the summons, quorum and majorities applying to the vote, but it is possible to require higher percentages, and there is no need to issue summons if all the shareholders are present or represented by a duly empowered attorney.
Board of Directors	<ul style="list-style-type: none"> - It is a governing body made up of at least three (3) natural persons, which manages the company alongside the General Manager. The directors can be Peruvian or foreigners.
General Manager	<ul style="list-style-type: none"> - The company can have one or more managers, one of which must act as the General Manager, in representation of the company. - The faculties of the manager, or managers, can be limited and the company can appoint different attorneys to represent them. - The managers can be Peruvian or foreigners, but to represent the company before the Peruvian Tax Administration, they are required to have the adequate migratory status. Check the Migratory Regime infocard.

The Closely-Held Corporation (S.A.C.)³

It is a special form of corporation, widely used for the flexibility that it provides to the investors, especially with regard to the summons for the General Shareholders' Meeting.

Its main attributes include, *inter alia*, the following:

- The number of shareholders cannot be less than two (2) or more than twenty (20).
- Its shares cannot be registered with the Stock Market's public registry.
- Unless otherwise agreed, the transfer of shares is limited, and shareholders have a Right of First Refusal before third parties and potential buyers.
- It is not mandatory to have a Board of Directors. The General Manager can assume its functions.
- The summons to the Shareholders' General Meeting can be issued by any means that allows to obtain a proof of receipt.

The Publicly Traded Company (S.A.A.)

The corporation can be Publicly Traded when it fulfills one or more of the following requisites:

- It has made an initial public offering of shares or obligations;

³ A new corporate regime has been created recently. It is called the Simplified Closely-Held Company (SACS) and its implementation is still underway. One of its main features is that only natural persons can be shareholders and its incorporation does not require the intervention of a public notary.



- It has over seven-hundred and fifty (750) shareholders;
- Over 35% of its share capital belongs to one-hundred and seventy five (175) or more shareholders;
- It was incorporated as such; or
- All the shareholders entitled to vote unanimously approved the adoption of this regime.

The S.A.A. must register all its shares on the Stock Market's Public Registry and it will be subject to the oversight of the Superintendence of the Stock Market ("SMV"). The free transfer of its shares cannot be limited.

The Peruvian Branch of a Foreign Company

Another valid option for a foreign investor is to establish a **Branch** in Peru instead of incorporating a company. Below is a brief comparison between both.

BRANCH	COMPANY
The Peruvian Branch does not have its own legal personality. In other words, it has the same personality as the parent company. Thus, the latter will be held liable for any obligation undertaken by the Branch.	The company incorporated in Peru by a foreign company has its own legal personality. The parent company cannot be held liable for the obligations undertaken by the Peruvian company.
The Branch must appoint a legal representative in Peru.	It has a General Shareholders' Meeting, Manager and Board of Directors, as applicable.
Its incorporation can be a bit complex, given that it requires corporate documents issued by the parent company abroad.	Its incorporation process is faster and less complex.
In public tenders, the Branch can claim any experience obtained by the parent company as if it were its own.	The company cannot claim the experience obtained by its parent company as its own.

Partnership Agreements

They are contracts that create and regulate participation or integration relationships in businesses or certain companies in which the parties have common interest. The partnership agreement does not create a new legal person, and the agreement must be in writing. It is not subject to registration.

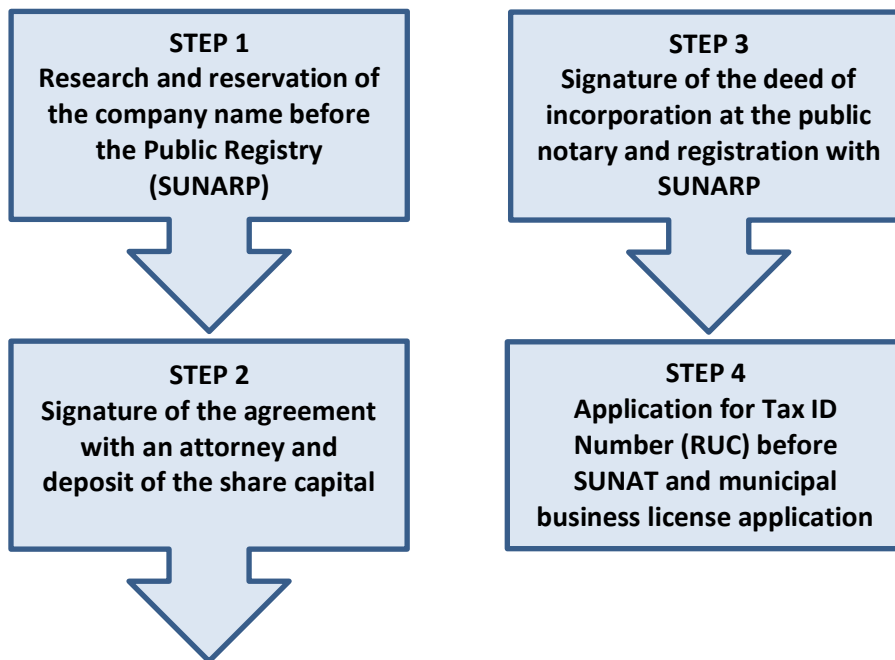
The Peruvian law has established two (2) forms of partnership agreements: the association in participation (*asociación en participación*) and the consortium (*consorcio*). In the association in participation, the primary associate grants to one or more associates a share in the business results (profits and losses) in exchange for a contribution. The management of the business shall be under the exclusive responsibility of the primary associate, who shall be the only one liable before third parties. The other associates have rights to demand accountability.

In the consortium, both parties participate, actively and directly, in the business. Each party is liable before third parties individually. Nonetheless, it is common for third parties to demand joint and several



liability of the members of the consortium. Consortiums are widely used in public tenders.

Steps for Incorporating a Company⁴



Powers of Attorney and Apostille

In the event that the foreign company wishes to **incorporate a company in Peru**, there are, in practice, **two options**. In the first option, which is widely used, the Peruvian counsels of the parent company incorporate the Peruvian company, acting as its founding shareholders, and then transfer the shares to the parent company for it to become a shareholder. In the second option, the parent company grants a power of attorney in its country of origin, so that its Peruvian counsels may act on its behalf and incorporate the company in their name. Thus, the parent company is a shareholder from the very beginning.

The power of attorney can be granted before the Peruvian Consulate abroad or before the competent authorities in the country of origin, so that it may later be registered in Peru. All documents issued abroad must be legalized or apostilled, depending of each case. If the country of the parent company is not a party to the Apostille Convention, it will have to legalize the documents before the Peruvian Consulate and then have them certified by the Ministry of Foreign Affairs in Peru. A certificate of good standing, or any certificate providing a proof of existence issued by competent authorities, will be needed to request the registration of the power of attorney issued by the parent company.

⁴ The costs associated with the notary are approximately €150, and the registry fees are 3/100 the value of the share capital, not including the attorney fees.

In the event that a foreign natural person signs the bylaws of the Peruvian company, they will need a Special Permit to Sign Contracts or a migratory status allowing them to do so. See the Immigration Regime Infocard.

Links of interest

National Superintendence of Public Registries (SUNARP):

<https://www.sunarp.gob.pe/index.asp>

National Superintendence of Immigration (MIGRACIONES):

<https://www.migraciones.gob.pe/>

This infocard has been prepared by the experts of the EU MAT Peru project, which provides updated information for the ELANBiz platform.

If you want to get personalized information
send us a question through our service
“[Ask the Expert](#)”.
It is free and you will receive the answer
within a maximum of 5 working days!

Didn't find what you need?

Ask the expert

Disclaimer

The positions expressed are those of the authors and do not necessarily reflect the official opinion of the European Union. Neither the European Union nor any person acting on behalf of the European Union is responsible for the use that might be made of this information. Neither the European Union nor the ElanBiz consortium members are responsible or may be held accountable for any loss suffered as a result of reliance upon the content of this infocard.