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Blockchain
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Peru: Law & Practice
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PERU

Law and Practice

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1. BLOCKCHAIN MARKET AND BUSINESS MODEL OVERVIEW

1.1 Evolution of the Blockchain Market

Although it is still in the early stages of adoption, the Peruvian blockchain ecosystem has grown over the past year in terms of active communities as well as initiatives and businesses interested in offering services around blockchain, distributed ledger technology (DLT) and web3 technologies.

The main challenges that will most affect the development of the blockchain market are as follows.

- Regulation will be a trending topic in Peru. Currently, Bill No 1042/2021-CR proposes to regulate companies that offer services of the use and exchange of digital assets and cryptocurrencies through technological platforms. The bill states that such companies must be constituted in Peru or have a branch office in Peru, and must be registered with the Superintendency of Banking and Insurance (SBS). Similar bills covering different aspects of fintech and the crypto-economy will instigate very relevant regulatory discussions, which will be key for the development of the ecosystem.
- For blockchain, DLT or web3 projects without a crypto-asset component, the main challenges for its consolidation will revolve around incumbent adoption, the need for co-operation and the need for qualified technical personnel.

1.2 Business Models

The most relevant highlights in the Peruvian blockchain ecosystem are as follows:

- the tax authority (*Superintendencia Nacional de Aduanas y de Administración Tributaria – SUNAT*) is involved in Project Cadena, an information exchange between the customs authorities of different LatAm countries supported by the LACChain alliance;
- the Co-operative of Production and Special Services of Andean Camelid Producers (*Coopecan Peru*) is using blockchain technology in the alpaca production chain; and
- governmental agency Peru Compras has developed a public procurement platform supported by blockchain.

There are also start-ups using DLT technologies in Peru with promising use cases, such as:

- KayTrust;
- Firulaix;
- QolKrex Foundation;
- PachaCuy;
- Qori;
- Stamping.io;
- NFTickets;
- TenMas;
- Andino DAO;
- Crypto Vida;
- Metasuyo; and
- Crypto-Nights.

Banks, insurance companies, telecommunications companies and the retail industry are exploring proofs of concept and use cases of blockchain/DLT technologies. According to industry sources, a local bank is currently exploring the possibility of opening a crypto-exchange, and an insurance company is planning to use smart contracts to enable micro-insurance.

Finally, according to a recent report by Asian cryptocurrency payments company TripleA, 3.7% of Peruvians own cryptocurrency, which is one of the highest percentages in Latin America.

1.3 Decentralised Finance Environment

No significant local actors are currently offering decentralised finance (DeFi) services in Peru.

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Even though the adoption of such services is slow, there is growing interest from Peruvians involved in crypto-economics in using international services such as "liquidity pools", "staking", "decentralised exchanges", "farming", "flash loans", etc.

There are no specific rules applicable to DeFi platforms.

1.4 Non-fungible Tokens

There is growing interest from local artists developing projects involving non-fungible tokens (NFTs), such as Wakoverso, Llamageddon and Llama Punkz. There are also NFT-based projects such as Ecoladrillos, which is an association that seeks to raise funds with NFTs in order to reduce the impact of plastic on marine life.

The marketplaces most used by Peruvians are Opensea, Singular and Minteable, and storage is mainly on InterPlanetary File Systems (IPFS).

According to recent research from Finder.com, one in ten Peruvians users owns an NFT, meaning that Peru ranks 10th in NFT ownership among 20 countries.

2. REGULATION IN GENERAL

2.1 Regulatory Overview

There is no specific regulatory regime in Peru that applies to market participants using blockchain technology or cryptocurrencies.

2.2 International Standards

Peru is a founding member of the Latin America Financial Action Task Force, which is an associate member of FATF. Therefore, it adheres to the recommendations issued by FATF, including the Standards and binding measures for the regulation and supervision of activities involving virtual assets (VA) and VA service providers (Recommendation 15).

In 2020, following the above recommendation, the Peruvian Financial Intelligence Unit, with co-operation from the *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ), published a report entitled "Situational Diagnosis, Comparative Legislation and Exposure to ML/TF Risks in Peru", which recommends that future regulation should be focused on activities (rather than subjects), such as VA-related activities carried out by regulated financial institutions, virtual currency exchange, VA payment service providers, wallet providers, VA deposit/custody service providers and participants in the issue and sale of VA.

The SBS recently proposed the inclusion of VA service providers as "obliged subjects" within the scope of AML regulation, to the Ministry of Justice and Human Rights. As of May 2022, the proposal is still being analysed, but if it is accepted, the following activities will be included within the scope of AML legislation:

- exchanges between assets, virtual currency and fiat currency;
- exchanges between one or more VA currency forms;
- VA transfers;
- custody and/or administration of VA or instruments that allow control over VA; and
- participation in and provision of financial services related to an issuer offering and/or selling VA.

2.3 Regulatory Bodies

The regulatory bodies most relevant to businesses or individuals using blockchain in Peru are as follows:

- the Peruvian Central Bank (BCRP) regulates money and credit in the financial system,

manages international reserves, issues notes and coins, and periodically reports on the country's finance indicators;

- the Superintendence of Market Securities (SMV) regulates the public offering and trading of securities;
- the SBS regulates and supervises all financial institutions, insurance companies and pension funds administrators in Peru;
- the Financial Intelligence Unit of Peru (UIF-Peru) is in charge of managing information for the detection of money laundering (ML) and/or the financing of terrorism (FT);
- the National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOPI) is the consumer, competition and intellectual property agency; and
- the Ministry of Justice and Human Rights is in charge of enforcing the data protection regulations.

2.4 Self-regulatory Organisations

As far as is known, there are no self-regulatory organisations performing regulatory or quasi-regulatory roles in Peru. However, various communities and associations have mushroomed in the Peruvian blockchain ecosystem. The Blockchain & DLT Peru Association and the Fintech Association are two respected associations with a focus on fintech, blockchain and crypto-economics, gathering the most relevant local professionals and stakeholders from the private sector. Both associations can participate actively in public consultation processes related to proposed legislation and public policies.

Other communities have also emerged, such as Lima Cripto, Polkadot, Kusama Peru, Crypto-Block Perú, Crypto-Nights, El Club del Bitcoin and Ethereum Lima, and are generating awareness on blockchain and crypto-economics through meet-ups, conferences and webinars.

2.5 Judicial Decisions and Litigation

There are no important judicial decisions that have played a role in interpreting the legal regime applicable to blockchain in Peru.

2.6 Enforcement Actions

There are no enforcement actions in Peru that have helped market participants better understand the "regulatory perimeter" of permitted and prohibited activity using blockchain.

However, the SMV has issued a public statement that cryptocurrencies are not regulated and do not fall under its scope of supervision, and warning of the associated risks of fraud, scams, money laundering and financing of terrorism.

Within the discussion of Bill No 1042/2021-CR, intending to regulate exchanges of crypto-assets, the BCRP highlighted that cryptocurrencies are not legal tender and emphasised that they facilitate tax evasion and are related to other illegal activities.

Likewise, the SBS has stated that cryptocurrencies are not within their scope of supervision and control, and expressed the importance of developing a legal framework for digital assets.

2.7 Regulatory Sandbox

A regulatory sandbox was recently approved by the SBS, through Resolution No 2429-2021, which allows only eligible regulated entities to implement innovative models, which can include blockchain-based projects.

This sandbox contemplates two regimes:

- a flexibility regime, intended for innovative models based on activities under the existing legal framework that require the temporary flexibility of some regulatory requirements; and

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- an extraordinary regime, intended for innovative models that are not established under the current legal framework.

2.8 Tax Regime
There have not been any updates to the Peruvian tax regime to consider the use of blockchain and cryptocurrencies.

2.9 Other Government Initiatives
There are no governmental bodies in Peru leading "task forces" or committees looking into the benefits and challenges posed by the use of blockchain.

3. CRYPTOCURRENCIES AND OTHER DIGITAL ASSETS

3.1 Ownership
There are no specific rules applicable to digital assets whose transfer is determined based on an instruction given to a blockchain network using a private cryptographic key. However, digital assets can be considered "movable assets" subject to Peruvian civil legislation.

3.2 Categorisation
There is no legal categorisation for digital assets in Peru, nor any process to determine their appropriate categorisation.

3.3 Stablecoins
There are no specific rules applicable to stablecoins in Peru.

3.4 Use of Digital Assets
Cryptocurrencies are not prohibited or considered as legal currency. Therefore, it is possible to make valid payments with cryptocurrencies, provided that the parties have agreed privately to such transactions.

3.5 Non-fungible Tokens
There are no specific regulations for NFTs in Peru.

However, the consumer protection, competition, intellectual property and copyright regulation remains applicable to NFTs.

4. EXCHANGES, MARKETS AND WALLET PROVIDERS

4.1 Types of Markets
In Peru, the market is divided into custodial and non-custodial exchanges.

4.2 On-Ramps and Off-Ramps
The exchange of cryptocurrency for fiat currency and vice versa occurs in Peru mainly through brokers. Broker-dealers are very popular among Peruvians; other popular companies that have operations in Peru include Buda.com, Agente BTC and Cajero.pe.

Currently, there is no specific regulation that applies to fiat-to-crypto (or vice versa) and crypto-to-crypto exchanges. However, in its research paper entitled "Situational Diagnosis, Comparative Legislation and Exposure to ML/TF Risks in Peru", the SBS has recommended that the regulatory authorities focus, among other activities, on the regulation of virtual currency exchange activities, as VA to fiat (and vice versa), VA to VA, and VA transfers.

4.3 KYC/AML
In Peru, there is no specific KYC/AML regulation applicable to digital transactions. However, in August 2021, UIF-Peru (the authority in charge of supervising money laundering and terrorist financing activities) expressed its intention to regulate companies providing services that involve digital assets in Peru so they will be obliged to register themselves with UIF-Peru,

have a compliance officer and inform UIF-Peru about any suspicious client transactions.

4.4 Regulation of Markets
In Peru, it is not possible to issue any massive financial asset (physical or digital) without authorisation from the SMV. However, Peru has not issued any specific regulation for blockchain-based digital assets.

As far as is known, there have been no enforcement actions towards digital assets, but in October 2021 SMV made a general public statement on the use of cryptocurrencies, warning that they involve some risks for consumers.

4.5 Re-hypothecation of Assets
In Peru, there are no specific regulatory limits on the ability of a digital asset exchange to re-hypothecate (on-transfer) the digital assets they hold for customers to third parties.

4.6 Wallet Providers
There are no specific regulations in Peru that apply to businesses that provide hot or cold storage solutions for private cryptographic keys that control the ability to give instructions with respect to digital assets.

However, as wallet providers seek to offer crypto-storage solutions, it is likely that they will eventually be included within the AML/CFT legal framework.

5. CAPITAL MARKETS AND FUNDRAISING

5.1 Initial Coin Offerings
In Peru, there are no specific rules applicable to fundraising through the creation and sale of tokens. In fact, the SMV has reaffirmed this publicly, stating that as there are no rules on the offer or promotion of cryptocurrencies, virtual currencies or tokens that are not backed by a financial authority or government entity, such offerings do not fall within the legal supervision of the SMV.

However, according to Peruvian regulations, this type of activity may fall under the regulatory scope of the SMV or the SBS in cases where, independent of the mechanism used (in this case tokens), the transaction qualifies as a "public offer" of securitiesor an activity authorised exclusively for financial entities.

5.2 Initial Exchange Offerings
In Peru, there is no specific regulation applicable to fundraising through initial exchange offerings (IEOs).

However, if the token offered in an IEO has the qualities of a security according to the Peruvian Securities Market Act (Legislative Decree No 861), this legal framework will apply.

5.3 Other Token Launch Mechanisms
In Peru there is no specific regulation on airdrop or free-of-charge token distributions.

5.4 Investment Funds
Currently, there are no specific regulations in Peru on investment funds or collective investment schemes that invest in digital assets.

5.5 Broker-Dealers and Other Financial Intermediaries
There is no specific regulation for broker-dealers or other financial intermediaries that trade with digital assets.

6. SMART CONTRACTS

6.1 Enforceability
There is no specific regulation about the enforceability of smart contracts on a blockchain-based network. Therefore, the general provisions in the

Peruvian Civil Code regulating contracts and the expression of will through electronic means remain fully applicable to smart contracts.

6.2 Developer Liability

Developers of blockchain-based networks could not be responsible for losses that arise through the use of their software, nor can they be considered "fiduciaries". This is primarily due to the decentralised nature of the basic characteristics of blockchain technology – ie, decentralised DLT that works with a consensus mechanism.

However, given that the development of blockchain-based networks or code is considered a professional activity, such activity is subject to the general liability rules established in the Peruvian Civil Code.

7. LENDING, CUSTODY AND SECURED TRANSACTIONS

7.1 Decentralised Finance Platforms

DeFi platforms that match borrowers and lenders of digital assets can operate in Peru, since there is no regulation prohibiting such activity. However, if the digital asset on a DeFi platform falls under the definition of "security" established in the Peruvian securities' legal framework, these rules may apply to those DeFi operations; if a DeFi model carries out operations authorised exclusively to certain entities in the financial system, such rules may be applicable to such DeFi operations.

7.2 Security

There are no specific regulations applicable to the use of digital assets pledged as collateral for a loan. However, general rules established in Legislative Decree No 1400, the Law of Movable Collaterals and the Peruvian Civil Code remain fully applicable.

7.3 Custody

There is no specific regulation on the custody of digital assets, so the general civil and criminal legislation referring to custody or deposit agreements remains applicable. However, in the report entitled "Situational Diagnosis, Comparative Legislation and Exposure to ML/TF Risks in Peru", prepared by SBS, it is recommended that Peruvian regulators focus the future regulation, among other aspects, on activities related to the provision of deposit or custody of virtual assets.

Also, if a digital asset has the qualities of a security according to the Peruvian Securities Market Act (Legislative Decree No 861), the legal framework for securities custody may apply.

8. DATA PRIVACY AND PROTECTION

8.1 Data Privacy

Under Peruvian Data Privacy Law, data subjects have the right to information, access, rectification, cancellation (deletion) and opposition, among others.

The right to be forgotten is not expressly regulated in Peru but, according to case law, the Peruvian Data Protection Authority has protected it under the right of cancellation. According to the Peruvian Data Protection Act (Law 29733), the cancellation will not proceed when the personal data must be kept for historical, statistical or scientific reasons, nor if the contractual relations between the controller and the owner of the personal data justify its processing. However, whenever possible, a mechanism of dissociation or anonymisation should be used to continue processing the data when the cancellation is denied.

Likewise, the controller and the processor are obliged to store personal data in a way that ena-

bles the owner thereof to exercise their rights. However, since public blockchains do not have a central person responsible for data protection, and there are multiple actors that can be considered as controllers and processors, the enforcement of these rights (including the right to be forgotten) would be very challenging.

Therefore, a blockchain should be designed in a way so as to comply with Peruvian laws and regulations.

8.2 Data Protection

There are no specific data protection rules applicable to the use of blockchain-based products or services. Therefore, the general provisions of the Peruvian data protection legal framework remain fully applicable to the controller and the processor of such personal data in blockchain products or services.

Personal data is understood as all information about an individual that identifies them or makes them identifiable through means that can be reasonably used. The treatment or processing of personal data is referred to as any operation or technical procedure, automated or not, that allows the collection, registration, organisation, storage, preservation, preparation, modification, extraction, consultation, use, blocking, deletion, communication by transfer or dissemination or any other form of processing that facilitates the access, correlation or interconnection of personal data.

Therefore, data stored on blockchains, or blockchain-related products or services, can be regarded as personal data if it identifies or makes a person identifiable.

9. MINING AND STAKING

9.1 Mining

There are no specific rules applicable to mining.

9.2 Staking

The "staking" of tokens to secure a blockchain-based network using a "proof of stake" consensus protocol is not regulated in Peru. "Staking as a service" businesses do exist in Peru, but no regulations yet apply to this business model.

10. DECENTRALISED AUTONOMOUS ORGANISATIONS (DAOS)

10.1 General

There is still a low level of activity for DAOs in Peru. The most relevant DAOs currently being implemented in the Peruvian ecosystem are Andino DAO, Criptoamigos and Crypto Mujeres, which are the pioneers and the most active local DAOs. Peruvian DAOs are focused on creating communities involved mainly in education and training projects.

There are currently no specific regulations for nor oversight of DAOs. As they continue to gain popularity, there will be a need for new rules for DAOs domiciled in Peru, especially in the areas of corporate, tax and AML/CFT.

10.2 DAO Governance

There is limited information on the governance structures being used by Peruvian DAOs, but some DAOs maintain their decentralised structure, have founders and leaders who have a stronger participation in the DAO's daily activities, and consequently own a higher percentage of tokens. Some DAOs have a token exchange scheme for contributions to their projects.

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The governance processes of local DAOs are often on-chain and reflected through smart contracts. The main challenges faced by local DAOs have been educating their users and encouraging their involvement in the governance process through aligning the DAO's organisational objectives with its users' interests in order to ensure their participation.

10.3 Legal Entity Options

Peruvian DAOs do not currently use legal entity structures. From a legal perspective, having a legal entity linked to a DAO has the following benefits:

• it enables the DAO's members to have limited liability protection against the DAO's debts;
• it gives DAOs the ability to sign contracts with third parties; and
• it provides clarity about what laws apply to DAOs, facilitating regulatory compliance, particularly in the case of tax regulations.

On the other hand, fitting DAOs into existing legal structures could limit their innovative organisational proposal, as the current Peruvian legal framework only contemplates traditional and hierarchical organisational schemes.

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Niubox is a pioneering firm providing legal advice to technology and digital businesses, strategic advice in public and regulatory affairs and legal innovation consultancy, with operations in Peru and Ecuador. It adopts a purpose-driven mindset that challenges the traditional organisational structure and the delivery of legal services through a people-centric approach. Niubox has developed strong expertise in addressing all the legal and regulatory needs of the technology industry, including digital platforms, e-commerce, sharing economy, fintech and crypto ecosystems, as well as providing legal and regulatory advice to clients in different industries on their digital transformation projects. The firm's clients range from multinational Fortune 500 technology companies to emerging start-ups developing cutting-edge technologies.

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