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Peru Securities Law

Introduction

An extensive search of both online resources as well as publications located at the University of Michigan Law library yielded a very limited amount of information on Peru Securities Law. Any international treatises found on securities law failed to mention Peru from mention, and any publications from Peru were only in Spanish. That being said, some general information regarding the regulation of securities in Peru was located, and the text of the Peruvian Securities Act--Ley del Mercado de Valores- Decreto Legislativo N 861-- (Securities Market Law – Law N 861) was located. The entire text of the Act, in Spanish, can be found at http://www.bvl.com.pe/legal/marco_ley.htm#titulo3. Moreover, by use of the translation function on Google (www.google.com) some broad relevant categories of the Act were found. However any detailed analysis of the Act will require the location of an English version of the Act or a Spanish translator.

Discussion

I. Regulation of Securities In Peru

The National Commission on the Supervision of companies and Securities (CONASEV) is the institution responsible to promote the securities market, oversee the adequate management of companies and regulate the accounting thereof. It is the Peruvian equivalent of the US Securities and Exchange Commission (SEC).

The main function of CONASEV are to control individuals, legal entities that participate in the securities market, to supervise legal entities organized according to Peruvian corporate law, to look after the transparency of the securities market law and the correct formation of prices therein and protect investors.

It should be noted that CONASEV is a member of The International Organization of Securities Commissions (IOSCO). The purpose of the IOSCO is below (reprinted from the IOSCO website):

The member agencies currently assembled together in the International Organization of Securities Commissions have resolved, through its permanent structures:

- to cooperate together to promote high standards of regulation in order to maintain just, efficient and sound markets;
- to exchange information on their respective experiences in order to promote the development of domestic markets;
- to unite their efforts to establish standards and an effective surveillance of international securities transactions;
- to provide mutual assistance to promote the integrity of the markets by a rigorous application of the standards and by effective enforcement against offenses.

II. Article 43 of Peruvian Securities Act

Article 43 prohibits inside trader transactions. Thus it is similar to provisions in its US counterpart which prohibits insider trading, but not similar to Rule 10b-5. Rule 10b-5 deals with fraud and material misrepresentation. It reads:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

- a. To employ any device, scheme, or artifice to defraud,*
- b. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or*

- c. *To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,*

In contrast, Article 43 of the Peruvian Securities Act deals with inside trading and prohibits the same. A rough translation of Article 43 (by use of the translator tool found on Google) reads:

Article 43° - Prohibitions. –

The people who have privileged information, are prohibited of:

- a) *To reveal or to trust the information to other people until this one is disclosed to the market;*
- b) *To recommend the execution of an operation with values respect to which privileged information is had; and,*
- c) *To make use illegal and to be worth, directly or indirectly, in own benefit or of third, the privileged information.*

These people are forced to guard because their subordinates accept the prohibitions settled down in this article.

The people who fail to fulfill the prohibitions settled down in the present article must make delivery to the emitter or bottom, when she is information relative to the operations of the mutual bottoms, pension and investment funds, of the benefits that they have obtained.

III. Articles 28-33

The above article appears to deal with financial reporting requirements of companies selling securities on the public market. A rough translation of Articles 29 and 30 follow:

- a) *Its financial states and indicators, with the minimum information that of general way it indicates CONASEV, with a nongreater regularity to the trimester; and, b) Its annual memory, with the minimum information that of general way it establishes CONASEV. These documents will have to be to disposition of the possessors of the values in the social seat of the emitter. Article 30° - Countable Norms. - CONASEV establishes the countable norms for the elaboration of the financial statements and its corresponding notes of the emitters and other natural or legal people submissive their control and supervision, as well as the form of presentation of such states. The auditada financial information that by legal or administrative disposition it must appear to CONASEV or, in*

its case, to stock-market or organization responsible for the conduction of the centralized mechanism, will be considered by societies auditors who keep independence respect to the legal person or auditado patrimony.

IV. Articles 53-63

The above articles appear to deal with information required to be contained in a prospectus of a company offering its securities on the public stock market. The Act requires that the prospectus contains all necessary information for proper decision making by the investors. A rough translation of Article 56, which lays out the type of information which needs to be included in the prospectus follows:

Prospect informative will have to contain all the necessary information for the decision making on the part of the investors. I prospect informative must contain like minimum the following thing: a) The characteristics of the values, as well as the rights and obligations that grant their holder; b) The excellent clauses of the contract of emission or the statute for the investor; c) The factors that mean a risk for the expectations of the investors; d) Signature block of the people responsible for the elaboration of I prospect informative: estructuradora organization or its representative, in its case, as well as of the main administrative, legal, countable civil employee and of finances of the emitter; e) The auditados financial statements of the emitter, with its explanatory notes and the respective opinion, corresponding to both last years, when the period of constitution allows it; f) The detail of the guarantees of the emission, when it corresponds; g) The procedure to follow for the positioning of the values; and, h) The complementary information that it determines CONASEV by means of dispositions of general character.

Conclusion

Peru has a sophisticated securities law on the books and the law is enforced by the CONASEV, a Peruvian equivalent of the SEC. The Peruvian securities law aims to protect investors from misinformation as can be gleaned by its requirement that a prospectus be provided by companies and that it contain information which will help an investor decide whether or not to invest. Furthermore the Peruvian law expressly prohibits inside trading. However more detailed analysis of the Peruvian law will require a good translated copy of the law or researchers with Spanish fluency.