

FOREIGN INVESTMENT

Dr. Ángel Castro Rivera, Partner at MG Abogados Peru & Spain



About Dr. Ángel Castro Rivera

Dr. Ángel Castro Rivera is a practicing attorney of the Lima Bar Association, the Bar Association of Madrid, and incorporated member into the Council of the European Lawyers under the Court of Justice of the European Union (CCBE).

Studies: Diploma in 'International Business & Management' by Portland State University, USA and Ceadex; 'Master In International Economic Law' at the Pontifical Catholic University of Peru; 'European Master In Law & Economics' by the University of Rotterdam, the Netherlands and the University of Hamburg; 'Germany and doctoral studies' at the Université Paris IX Dauphine, France and finally the Deutsches Übersee-Institut Hamburg, Germany.

Practice Areas & Role: International Law, International Economic Law, International Contracting, Foreign Investments & Regulation and Administrative Law (tenders).

Dr. Castro Rivera is an associate of MG ABOGADOS SPAIN and responsible for its Foreign Investment Department and its Peruvian Desk. He is also the Main Partner of MG ABOGADOS PERU and all clients dealing with Latin America.

From Spain to Peru, this thought leader has made huge steps in the development and implementation of business projects that not only attract FDI, but also contribute towards the overall economy of a developing nation.

On the matter of foreign investment, Lawyer Monthly hears from Dr. Ángel Castro Rivera, Partner at MG Abogados Peru & Spain. Here Ángel discusses the rapid growth of Peru's economy, its challenges over the years and to come, and touches on the firm's thought leadership in this critical Latin American region.

What would you say are the biggest draws for investors when looking to Spain and Peru as a place to do business?

Recent data on the Spanish economy's performance shows consolidation of the economic recovery. The IMF prognosed that the Spanish economy would grow 2.5% in 2016, registering a point more than the rest of the advanced economies and double that of the Eurozone.

Spain also offers a privileged position as a gateway to Latin America, given their shared past, and their linguistic and cultural heritage. Spain is also the European country with the most Latin Americans, and for this reason is the European business platform "par excellence" to do business with the Americas.

What about Peru?

Rapid growth in global trade and foreign investments in Peru in recent years has made the country one of the 20 most international trade-oriented nations in the world. According to the World Bank's report 'Doing Business 2016', Peru is very much open to regional and international trade and has a favorable environment for foreign investors. Additionally, Peru ranks 15th in international credit worthiness. Among South American countries, The World Bank ranks Peru as 2nd in ease of doing business. Also, the International Monetary Fund (IMF) and Bloomberg L.P. note that Peru is one of the best frontier markets for global investments.

Peru's sound economic policies have been key to obtaining an investment grade from major credit rating agencies. From 2004 to 2014, Peruvian exports grew from \$12.5 billion to \$34.1 billion. Peru recorded \$7.89 billion in foreign investments in 2014, placing the country high in the top 5 best investment grades in Latin America.

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As a thought leader in international business, how do you think Peru could be even more appealing to FDI?

Despite its shortcomings, Latin America, and especially Peru, has seen much progress in recent times. Peru has prioritized social progress and social inclusiveness, has embraced democracy and consolidated the Rule of Law. A favourable external environment, prudent macroeconomic policies, and structural reforms have helped to stimulate high growth and low inflation; thanks to its attractive legal and fiscal framework, Peru continues to attract FDI.

Nevertheless, as in every other economy, Peru still has a Pending Agenda to keep attracting FDI. In this sense, Peru has to keep investing in public health, security and education. Additionally, Peru has to keep working on giving added value giving to its natural resources, despite being a country rich in natural resources that are highly subject to price volatility (i.e. FDI flows into Peru

fell in 2013 following the natural resources slowdowns in Latin American and China). Peru's export earnings depend heavily on world market prices in metals and fish meal. According to the World Bank, the main challenges ahead that may have an impact on Peru's economic growth include the decline in commodity prices and a possible period of financial volatility associated with the expectation of higher interest rates in the US.

How complex are the rules that govern foreign investment in Peru? What EU directives or treaties directly affect this?

Since the 90s Peru has been simplifying/changing/easing its FDI legislation to host and facilitate foreign investments in the country and to maintain the stability required to promote private sector activity and investment.

Investors in Peru have the same rights over their investments as local investors, based on the principle of "national treatment." Peru also has a friendly legal

framework for investments and offers an attractive business environment for both national and foreign investment, including non-discriminatory treatment of foreign investors, unrestricted access to most economic sectors, and free transfers of capital. It is strictly forbidden to apply unequal treatment to investors with regard to prices, exchange aspects, tariffs, non-custom duties, business information, or any other feature with equivalent effects based on nationality, types of economic activity, or geographic location in the country.

The only investments requiring approval are those involving weapons and/or explosives, private security and surveillance, investments in maritime or air transport, and those located within Peru's borders or in protected natural areas.

During June 2012 the EU signed an ambitious and comprehensive Trade Agreement with Colombia and Peru (valid since 2013) that opened up markets on both sides

as well as having increased the stability and predictability of the commercial relations.

What have been the most recent regulatory developments to affect foreign investment law in Peru? How have these affected your work?

Peru has worked alongside 12 of the 21 participating countries of the Asia Pacific Economic Cooperation Forum (APEC) to develop the Trans-Pacific Partnership Agreement (TPP) that has become the most challenging negotiation process between the Asia, Oceania, and the Americas. The TPP paves the way for a future Free Trade Area of Asia Pacific (FTAAP).

Peru has also signed 20 trade agreements to increase and consolidate access to its main trading partners' markets for its main products, as well as the Free Trade Agreement with the European Union (EU) that has been in effect since March 2013. Peru is currently negotiating additional agreements with Turkey, El Salvador, the Trade in Services Agreement (TISA), and the Doha Development Round. In October 2015, the annual meeting of the World Bank Group and the IMF took place in Lima and brought together finance ministers and central bank governors from the institutions' 188 member countries.

For the specific case of Europe, during 2013 the 'EU-Colombia and Peru Trade Agreement'



entered into force, including commitments in the area of labor and environment-related matters, to strive to improve the laws and policies in these areas, and not to lower them in order to attract trade or investment. During 2014, the EU certified Peru's access to the Schengen System without approval (since the 15th of March 2015 Peruvians do not need a Schengen Visa to enter Europe).

Peru's new commercial policies have allowed expansion of the Peruvian export market, enabling over 94% of Peruvian exports to penetrate more than 50 countries under very competitive conditions. The main traditional exports of Peru are gold, oil, natural gas, zinc, lead, iron, fish meal, and coffee.

All of the above mentioned treaties and agreements have open up markets on both sides as well as increased the stability, predictability of the trading environment, and the number

of our clients, foreign companies and investors with numerous activities in both economies. Our jobs have been positively affected because of the growing number of clients interested in different kind of business opportunities (Private and Public Partnerships - PPP(s) - , Bidding Processes, Import & export activities, Merger and Acquisitions, etc.). Thanks to our offices in Spain and Italy, nowadays our new clients are mostly European.

We are also facilitating Peruvian investors with the execution of their projects in Europe.

What common challenges do foreign clients face when setting up a business in Peru? How do you help them navigate these?

The most common challenges that foreign investors and clients face when setting up a business in my country are: qualifying for the complex bidding processes for major projects; finding reliable partners to form partnerships or

consortiums; and cultural nuance and legal uncertainty & insecurity caused by changing its regulatory environment and not having legal advisors with the capacity to offer them comprehensive and trustable legal services.

The development of an extensive legal network, knowledge and relations within Peru allows us to provide specific assistance to European and Peruvian investors seeking new and very profitable business opportunities. We provide ongoing support for European companies who require it in Peruvian territory, for the consolidation of new businesses. We also provide comprehensive assistance, commercial, both extrajudicial and judicial to European companies wishing to create or having links with business and industry throughout Peru. One of our specialties is to advice companies who wish to qualify for the complex processes of bidding for major projects throughout Peru.

How busy and successful have you been with European clients throughout 2016? Were a large majority of them cross-border, or not? What atmosphere do you predict for the Peruvian FDI landscape in 2017?

During 2015 and 2016 we have been very active with cross border clients. We took care of the registration of several European companies, its legal representation, all legal aspects related to their participation in several national projects, biddings and Public and Private Partnerships.

We have become a platform for all European companies, regardless of their size, seeking to set up and extend their business in the European & Peruvian market, offering them all the legal, fiscal, technical and administrative services entailed in any process for introducing and establishing a new business project outside of its market of origin.

As a thought leader in this legal segment, how do you help create new strategies or develop and implement new legislation in relation to foreign investment and financing?

We are always aware and updated about all the changes, international legislation and new trends occurring in the legal world related to the promotion and protection of foreign investment and financing. Our three offices in Peru, Spain and Spanish Desk in Italy are constantly active and exchanging & collecting systematic information anywhere in the world concerning foreign investment and also organizing seminars trying to influence the implementation of new legislation that has a positive impact on business.

For example, one of the most feared evils in Latin America has always been corruption and has caused great damage (for international investors and businesses) to its positive image. Nowadays, and since the First Compliance Law N° 30424 was published (21.04.16), in Peru we are actively organizing different seminars and collaborating with local institutions in order to promote the benefits and future legal changes that have to be made in the Criminal Code and local legislation to be able to create a culture where public entities and companies do the right things to keep attracting foreign investments and clear the governmental hurdles so that business can get up and running quickly.

We do the same within the ABL (www.abloglobal.net), linking lawyers and legal knowledge worldwide. With over 700 lawyers and 51 offices in 32 countries, ABL allows private and public

entities an access to a creative and entrepreneurial quality legal advice and trends worldwide. We held two international meetings every year in different countries and during these conferences, ABL members give seminars, take part in workshops on specialist legal subjects (we call it Business Units), and celebrate meetings with local authorities to offer them our assistance in an attempt to promote their commercial advantages and let the world (and our clients) know the specific strengths and investment opportunities in these specific countries.

You have studied international and EU business law in many countries around the world; how has this contributed to the thought leadership you boast in this legal segment today?

What I am today is just the result of my studies abroad! I had the great opportunity to consolidate my legal background and continuing my professional educational development in different countries (mainly in Europe: France, Germany, Holland and Spain) and nowadays, despite my Latin American legal background, I am an incorporated member into the Council of the European Lawyers under the Court of Justice of the European Union (CCBE).

Europe has offered me an important professional mobility and a promissory career. Nowadays I can offer my clients legal advice on a diverse range of subjects and I can assure them that they will receive quality proactive legal advice to enable them to take their businesses everywhere in Europe or Latin America. **LM**

About MG Abogados

MG ABOGADOS' vision is focused in the consolidation of a network of relationships with leading law firms and industry associations around the world. As a representative of the law firm's international organization, ABL in Spain and Peru, the firm serves the needs of many companies and individuals who need advice on the international scene, in order to operate successfully in those countries.

MG ABOGADOS is a multidisciplinary team of lawyers, prestigious professionals with over twenty years of experience, who have teamed up to offer its clients comprehensive advice in all areas of law. The practice of MG Lawyers develops in the field of Bankruptcy Law, Commercial and Corporate, Civil, Labor, Economic, Financial, Fiscal, Administrative, Banking, Criminal, International, as well as the Foreign Investment. All members of MG Lawyers base their work philosophy on rigor, professionalism, commitment and a deep knowledge of legal matters.

The firm has an office in Madrid (Spain); in Lima (Peru) and a Spanish desk in Milan (Italy).

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