

JOINT-VENTURE AGREEMENTS UNDER PERUVIAN GENERAL CORPORATION LAW

Francisco Moreyra García-Sayán*

When parties decide to develop certain business enterprises, they often form a corporation or other type of legal entity. The parties conduct business and create their relationships in the name of the new entity and within the framework of the bylaws to which they have agreed. Some form of incorporation is, in principle, necessary or advisable when engaging in business enterprises that have long-term objectives that are formed to develop an activity of a permanent nature, or that may require the participation of a number of shareholders who have contributed significant financial resources.

For other types of business enterprises, however, the parties may prefer to establish and define the relationships that arise from working together without creating a new legal entity. The parties maintain their individual legal status and each one continues to perform independently the activities that constitute the enterprise's main purpose. In addition, the parties agree to jointly start a specific venture that, in most cases, lasts a specific period of time or that requires the performance of an endeavor with a limited goal. This is the area of economic activity in which the various forms of joint ventures are used most widely. For example, construction projects and mining explorations are widely conducted in Peru through what generally are called joint ventures. A joint venture allows two or more companies or persons to join to accomplish their objectives within the specific targeted activity, while maintaining their own legal individualities.

Naturally, there are other important considerations that the parties usually take into account when choosing the best legal vehicle to start and conduct a business. The tax situation of each

* © 2003, Francisco Moreyra García-Sayán. All rights reserved. Partner, Estudio Aurelio García-Sayán in Lima, Peru. Mr. García-Sayán's practice areas include civil law, corporate law, oil and gas law, international loans, and foreign investment.

party, the need for each to protect its intellectual property rights and to keep control over its information, and other financial and practical considerations also are given weight in deciding the structure through which a certain investment is to be made. In developing countries, few local companies have the financial resources to fund the entire cost and risk of certain projects. In many cases it is necessary for multinational companies to furnish the funds, technology, and expertise for those projects. As a result, in any venture in which a multinational corporation is to participate, the terms of the agreement must reflect the needs and concerns of both the multinational company and the local partner.

Current Peruvian legislation contained in the General Corporation Law No. 26887 (the Law) has refrained from using the term "joint venture."¹ Instead, it refers to what it calls *contratos asociativos*, that is, association contracts.² The terms joint venture and association contract may, for all practical purposes, be deemed to express the same concept. The Law considers, in addition to various forms of stock and limited liability corporations,³ the possibility of doing business through two specific forms of association contracts: the *asociación en participación*⁴ and the consortium.⁵ Both are created by a contract executed among the parties involved.⁶ Of course, the Law allows the parties to choose a different legal structure for their joint venture or association contracts.⁷ In choosing a different legal structure, the parties would be resorting to an atypical form of joint venture, because they would be forming a joint venture with characteristics that are not regulated by the Law. The relationship they forge then is governed entirely by the contractual arrangement. Calling them as-

1. *Ley General de Sociedades*, Ley No. 26887 (Peru 1997) (available at <www.leyes.congresso.gob.pe>). Throughout this Article, quotations from the Law are English translations from the original Spanish source. The reader should consult the Spanish source for the exact language of the quotation.

2. *Id.* at Libro Quinto, Contratos Asociativos, arts. 438–448.

3. *Ley General de Sociedades*, Ley No. 26887.

4. *Id.* at art. 440.

5. *Id.* at art. 445.

6. *Id.* at arts. 440, 445.

7. *See id.* at art. 438 (dealing with *Alcanos*, or the scope of the law regarding *contratos asociativos*, and failing to state that either an *asociación en participación* or a consortium is mandatory).

sociation contracts, the Law gives a definition of what, in broad terms, it considers to constitute a joint venture.⁸

Both the *asociación en participación* and the consortium contract must meet certain statutory requirements and characteristics.⁹ The Law dictates certain terms and conditions to which the parties must adhere when entering into an *asociación en participación* or a consortium contract.¹⁰ Nevertheless, the statutory regulation of these two forms of joint ventures is quite flexible and leaves many issues to the agreement of the parties.¹¹ In fact, the majority of the articles of the Law on these matters is applicable only absent provisions included by the parties in their agreements.

I. THE ASOCIACIÓN EN PARTICIPACIÓN

The *asociación en participación* contract is defined in the Law¹² as an agreement under which a party who owns or wishes to start a certain business offers to another party or parties the right to share in the results of the business against certain economic contributions.¹³

Under the Law, the main features of the *asociación en participación* contract are as follows:

8. *Id.* According to Article 438 of the Law, an association contract “creates and regulates participation and integration relationships in certain businesses or enterprises in the common interest of the parties. The association contract does not create a legal entity, must be in writing and is not subject to recording at the Registry.”

9. *Id.* at arts. 438–448.

10. *Id.*

11. *See id.* at arts. 438–448 (demonstrating that the statutory provisions governing joint ventures are quite broad and leave many decisions to be dealt with in the parties’ contract).

12. *Id.* at art. 440. According to Article 440 of the Law, the *asociación en participación* is “a contract whereby one person named *asociante* grants to one or more persons named *asociados* a share in the results or in the profits of one or more businesses or enterprises of the *asociante*, in exchange for a certain contribution.”

13. *Id.* at art. 439. According to Article 439 of the Law, the parties are obligated to make the money, goods, or services contributions established in the contract. If the amount of the contributions is not indicated, the parties are obligated to make those that are necessary for the performance of the business or enterprise, in proportion to their sharing in the profits. The delivery of money or goods or the rendering of services shall be made in the time, at the place, and in the manner established in the contract. In the absence of a provision on this matter, the rules for contributions established in this law shall govern, if applicable.

- (1) The only formality required is that the contract must be in writing.¹⁴ It is therefore a private agreement. There is no need to formalize the agreement in a deed before a notary public nor record it at any public registry.¹⁵ Certainly, if the parties wish to raise it into a public deed, they may do so.
- (2) It does not create a separate legal entity.¹⁶
- (3) There is one party who, in addition to contributing money, goods, or services, as agreed in the contract, exclusively owns, manages, and takes responsibility for the venture.¹⁷ He is called the *asociante*.¹⁸
- (4) The other parties, who are referred to as the *asociados*, contribute money, goods, or services, as agreed in the contract, and share in a proportion of the benefits or losses of the venture.¹⁹ However, the *asociados* do not participate in the venture's management²⁰ or assume any personal liabilities toward third parties.²¹
- (5) Third parties have recourse only against the *asociante*.²² They do not acquire rights or assume obligations toward the *asociados*, nor the *asociados* toward them.²³ Thus, with respect to third parties, the monies or assets contributed by the *asociados* to the *asociación en participación* are presumed to be the property of the *asociante*.²⁴ Third parties may act against these assets to satisfy any rights they may acquire against the *asociante* by virtue of the business conducted through the *asociación en participación*. The only exceptions to this rule are those assets, if any, that are recorded at the Public Registry in the name of the *asociados*. Even though these recorded assets may be assigned and put at the disposal of the venture, title is

14. *Id.* at art. 438.

15. *Id.*

16. *Id.*

17. *Id.* at arts. 439, 441.

18. *Id.* at art. 441.

19. *Id.* at arts. 439–440.

20. *Id.* at art. 441.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at art. 443.

not passed to the *asociante*, and, therefore, the assets remain legally outside of the *asociante's* and are owned solely by the *asociados*.²⁵

- (6) The *asociados* have the statutory right to timely receive a rendition of accounts from the *asociante*.²⁶ The parties may agree to the manner in which the *asociados* control or monitor the business.²⁷ Audit provisions may be included to allow any party to conduct audits in the accounts of the *asociación en participación*.
- (7) It is a term contract. It is not intended to last indefinitely. The term of the contract may be indicated expressly in the agreement or implied from the nature of the business that constitutes its purpose.

Once the *asociación en participación* contract is executed, it has the nature of a private agreement, which creates a legally valid and binding relationship among the parties.²⁸ As can be expected, many consequences arise from the contractual nature of this particular form of joint venture. For instance, the Law explicitly prohibits the *asociante* from inviting other parties to join the contract without the express consent of the *asociados*, because that would imply the right to amend the agreement unilaterally.²⁹ This, of course, is not acceptable. The parties also assume implicit obligations by virtue of the *asociación en participación* contract which obligations, although not expressly stated in the Law, nevertheless are accepted as uniform doctrine.

First, the *asociados* may not assign their rights in the venture to third parties without the consent of the other parties, as that would amend the agreement unilaterally. The *asociante* may not transfer the venture to third parties validly without the consent of the *asociados*.³⁰ Also, neither the *asociante* nor the *asociados*, unless expressly permitted under the agreement, may engage in activities that conflict or compete with the business that

25. *Id.*

26. *Id.* at art. 441.

27. *Id.*

28. *Id.*

29. *Id.* at art. 442. Article 442 of the Law states "the *asociante* cannot give a participation in the same business or enterprise to other persons without the express consent of the *asociados*."

30. *Id.*

is the purpose of the *asociación en participación*. It is clear from the above-referenced principles that the *asociación en participación* has the nature of an *intuito personae* contract. In an *intuito personae* contract, the qualifications of the parties, their capabilities, skills, reputations, economic situations, and other considerations relevant to the personal situations of the parties are deemed to be an essential basis of the contract.

The Law states that the parties are obligated to make the contributions they have agreed to make to the business — in money, assets, or services — in the manner indicated in the agreement.³¹ If the agreement is silent on these matters, the contributions, to the extent applicable, are governed by the provisions of the Law regarding contributions to corporations.³² The Law expressly allows the contributions of parties to an *asociación en participación* contract to be in the nature of services.³³ It is up to the parties to value such services.³⁴ The only form of corporation in which the Law prohibits equity contributions in services is the *sociedad anónima*, the traditional limited liability stock corporation.³⁵

One main issue to be addressed by the *asociación en participación* contract is the way in which the parties will share profits and losses. The Law prefers to leave this matter to the agreement of the parties.³⁶ The parties should negotiate and decide how they will participate in the results of the venture.³⁷ The Law states a general principle to be applied only when the parties have not expressly dealt with this crucial issue.³⁸ This general principle is that the parties will share losses in the same proportion that they share profits.³⁹

Also, unless otherwise agreed to by the parties, the Law indicates that the share of the *asociados* in the losses of the *asociación en participación* is limited to the amounts they contributed.⁴⁰

31. *Id.* at art. 439.

32. *Id.*

33. *Id.*

34. *Id.*

35. *See id.* at art. 51 (stating that service contributions are not permitted in a *sociedad anónima*).

36. *Id.* at arts. 438–440.

37. *Id.*

38. *Id.* at art. 444.

39. *Id.*

40. *Id.*

Finally, the Law allows the parties to agree that one party may share in the profits without sharing in the losses, or share in the profits or losses without having to contribute proportionally to the venture.⁴¹ The Law permits the parties to adopt freely any combination that satisfies their economic interests in the venture.⁴²

Although the *asociante* is the statutory owner and manager of the venture and is entitled to commit the venture with its own powers, the *asociación en participación* contract may provide for representatives of the *asociados* to supervise and oversee the conduct of business.⁴³ This is done through the representative's participation in committees or other similar decision-making bodies created by the contract. Thus, for the internal relationship between the *asociante* and the *asociados*, who are silent partners in the *asociación en participación*, the agreement may establish a relationship similar to the one that exists between the manager, or chief executive officer, and the board of directors in a corporation. By these means, the parties determine the scope of their respective controlling powers and define which of the *asociante's* actions require the prior agreement of the parties involved. For external relationships with third parties, however, the *asociante* exercises all of the rights and bears all the liabilities of the business.⁴⁴

It is appropriate that the *asociación en participación* contract provide for an executive committee or other similar body. The committee is composed of representatives of the parties, and the committee's prior approval would be necessary to adopt resolutions on certain key operational issues. These issues include approving budgets and expenditures over a given amount, obtaining financing above certain levels, approving the purchases of assets of a certain value, approving the manner in which distributions of profits are made, approving the commencement of litigation against third parties, and other related matters. It is through

41. *Id.* Article 444 of the Law states that, save as agreed otherwise, the *asociados* share in the losses in the same measure as they share in the profits and the losses that may affect them shall not exceed the amount of their contribution. The contract may provide that one person shares in the profits without sharing in the losses as well as sharing in the profits or in the losses without the existence of a specific contribution.

42. *Id.*

43. *Id.* at art. 441.

44. *Id.*

these provisions that the *asociados* participate internally in the venture and share in its success or failure, while at the same time keeping a silent role with respect to third parties.

In line with its legal nature, the assets and liabilities assigned to the *asociación en participación* venture and all the revenues and expenses incurred by it should be reflected in the accounting of the *asociante*.⁴⁵ Thus, any profits of the venture increase the taxable income of the *asociante* for income tax purposes. In the same way, any losses suffered decrease the taxable income of the *asociante* and may even produce an overall loss for income tax purposes.

On the other hand, because the *asociados* share in the profits and losses according to the terms of the *asociación en participación* contract, the percentage of the profit made or of the loss incurred that is attributable to them is deductible from the total profit or loss of the *asociante* and credited or debited to the *asociados*. The *asociados*, in turn, should add or subtract their other income from the venture in which they share to determine their own taxable income. According to Peruvian tax law, it is not necessary that the actual profit is remitted to the *asociados*. The *asociados* must account for such profits (or losses) in the fiscal year in which they are produced, regardless of whether they actually are received by the *asociados*.

Unless otherwise agreed, upon termination of the *asociación en participación* contract, the assets assigned or contributed by the *asociados* to the *asociante* remain the property of the latter.⁴⁶ Likewise, any remaining liabilities incurred are the *asociado's* responsibility.⁴⁷ The contract, however, may include certain specific rules that deviate from the above principle, and that will govern the liquidation of the assets and liabilities assigned by the parties to the venture.

45. For a comprehensive description and explanation of the legal and financial implications of a joint venture, see *Ley del Impuesto a la Renta*, Decreto Legislativo No. 774, art. 14 (Peru 1997).

46. *Ley General de Sociedades*, Ley No. 26887 at art. 443.

47. *Id.* at art. 441.

II. THE CONSORTIUM

The second form of joint venture contemplated by the Law is the consortium.⁴⁸ The consortium is created by a contract whose only required formality is that it be executed in a written document.⁴⁹ The Law does not require the intervention of a Notary or registration at a public registry.⁵⁰ In the consortium contract, two or more parties agree to enter into a temporary partnership to participate jointly in the management and share in the profits of a certain business or venture, while remaining independent entities.⁵¹ The consortium does not create a separate legal entity.

The main difference between the *asociación en participación* and the consortium is that, in the consortium, all of the parties are supposed to share “actively” and “directly” in the various activities of the consortium according to the function assigned to them by the contract.⁵² Unlike the *asociación en participación*, there are no mandatory silent partners.⁵³ In the consortium, each party is individually liable for its own actions and for the activities of the consortium.⁵⁴ Thus, as a matter of principle, each party to the consortium retains title to its own assets, even if assigned or used for the purposes of the venture.⁵⁵ Furthermore, any assets bought by the consortium with funds contributed by the parties and belonging to the consortium are co-owned by all the parties and are governed by the common-law rules on co-ownership in the proportions stated in the agreement.⁵⁶ Additionally, under a con-

48. *Id.* at art. 445.

49. *Id.* at art. 438.

50. *Id.*

51. *Id.* at art. 445. According to Article 445 of the Law, the consortium is a contract whereby two or more members associate to actively and directly participate in a business or enterprise with the purpose of obtaining an economic benefit, each maintaining its own autonomy. Each member of the consortium shall undertake the activities of the consortium that are assigned to it and those which it is committed to perform. In doing so, each member must coordinate with the other members of the consortium in accordance with the procedures and mechanisms contemplated in the contract.

52. *See id.* (stating that the parties act “actively” and “directly” in a consortium).

53. *Id.* at arts. 445–448.

54. *Id.* at art. 447.

55. *Id.* at art. 446.

56. *Id.* Article 446 of the Law states that “the goods that the members of the consortium assign to the fulfillment of the activity they have committed to continue to be of their exclusive property. The joint acquisition of certain goods are regulated by the rules of co-ownership.”

sortium contract, each party is directly liable to third parties in fulfilling its duties in the consortium.⁵⁷

Although, as a matter of principle, each party in a consortium is individually liable for the consequences of its actions toward third parties, the parties may, in certain cases, agree to be jointly and severally liable to third parties for any responsibilities they may incur when acting for the consortium.⁵⁸ Such a provision in the consortium contract is valid and binding.⁵⁹

Further, a consortium member can contract to limit the responsibility of one party to the other parties. For instance, the parties may decide that if a party has a sixty-percent share in the consortium, it should share in the same percentage of any liability incurred by the consortium, regardless of the cause of the liability. Generally, however, direct damages may be claimed in full by one party against another for the liabilities the consortium incurs as a result of one party's gross negligence.⁶⁰ Peruvian civil law prohibits an agreement in which a party is excluded or limited from potential exposure to liability resulting from its gross negligence.⁶¹

The Law allows the parties to determine how the consortium will be managed and supervised. The contract must define the manner in which decisions will be made by the participants in the venture. Usually, the party with the largest investment commitment to the consortium, with managerial experience in a similar type of venture, or with superior knowledge about the activity to be performed by the venture, is designated to act as the consortium's leader and representative. As leader, this party may choose not to manage it directly and may appoint a manager.

The manager usually is entitled to a fee or salary as compensation. In addition, the agreement should define the scope of the manager's rights and responsibilities. For example, the party that

57. *Id.* at art. 447. Article 447 of the Law states that "each member of the consortium is directly linked with third parties in the fulfillment of its corresponding activities in the consortium, acquiring rights and assuming obligations and responsibilities on his own behalf."

58. *Id.*

59. *Id.*

60. Cód. Civ. art. 1328 (Peru 1997).

61. *Id.* Article 1328 of the Peruvian Civil Code states that "any provision that excludes or limits liability due to fraud or gross negligence of the debtor or of third parties acting for the debtor is null."

acts as a manager or that appoints a manager normally would be held liable for its actions or the actions of the manager selected and for all the employees working under the manager. Once the consortium contract is executed, an office will be staffed and the manager will be responsible for adequately supervising its personnel. When gross negligence or willful misconduct is involved, the party acting as manager will be responsible.⁶² Again, pursuant to Peruvian law, this type of liability may not be eliminated or restricted.⁶³

Other matters that should be considered in drafting a consortium contract include the following:

- (1) The contract should describe the resources in money, assets, or services that each party will assign to the consortium. The contract should specify how and when the parties' contributions are going to be made and the amount of any interest or penalties charged to parties whose contributions are late. In the case of assets or service contributions, the parties should assign them a value for purposes of the consortium.
- (2) The contract should address the reimbursement of expenses incurred by each party in discharging its obligations in the consortium. When the parties will be involved directly in consortium activities, the contract should allow for expenditures incurred by them to be billed to the consortium for reimbursement. The contract also should contemplate when expenditures will not be reimbursable. Frequently, even authorized reimbursements will require prior approval by the executive committee and/or the consortium manager.
- (3) The contract should address the way in which the books and the accounting shall be kept. Tax law allows the consortium to maintain an accounting separate from the accounting of its members.⁶⁴ Usually one or more bank ac-

62. *Id.*

63. *Id.*

64. *Ley del Impuesto a la Renta*, Decreto Legislativo No. 774 at art. 14. Article 14 of the Income Tax Law No. 774, as amended, considers that a joint venture and a consortium are legal entities only for the purpose of considering them taxpayers as any other legal entity, but only if they keep independent accounting with respect to the accounting of the parties to the joint venture or consortium. If the joint venture or consortium chooses not to

counts are opened to channel all of the consortium's revenue and expenditures. Appropriate powers of attorney are required to draw funds against these accounts.

- (4) The contract should specify the percentage in which the parties will share in the results of the venture, be they profits or losses.⁶⁵ This is the heart of the consortium contract. Frequently, the share in the result is in the same proportion as the parties' share in their economic commitments or contributions to the consortium. However, there are instances in which this principle is not applicable and the parties may agree otherwise. In the absence of any express provision on this matter — which would be extremely rare — the Law indicates that all the parties share equally in the results.⁶⁶
- (5) The contract should fix the duration. Sometimes the parties prefer to agree on a limited duration, which may be extended if the parties agree to do so. In other cases, the project or enterprise is described in the contract, and the parties agree that the consortium will last until all the phases of the venture are completed.
- (6) The contract should include provisions on the causes for separating a party and the consequences of such separation. If a party defaults in its commitments to contribute money, goods, or services to the consortium or experiences financial difficulties and as a result certain assets assigned by the party to the consortium are attached by creditors or the party applies for insolvency protection or is declared bankrupt, the contract may provide that the party automatically ceases to be a member of the consortium. Alternatively, notice of separation can be given to

carry its own independent accounting, then it is not considered an independent taxpayer and each party to the consortium must pay the income taxes applicable to the portion of the income attributed to them pursuant to the agreement. It should be noted that the tax law refers to joint ventures in a general sense: that is, as any form of partnership established with a legal structure that is not an *asociación en participación* or a consortium, since the latter two are specific or typical forms of the general notion of joint ventures that the Law has individually regulated and denominated.

65. *Ley General de Sociedades*, Ley No. 26887 at art. 448.

66. *Id.* Article 448 of the Law states that "the contract must establish the rules and the systems to share in the results of the consortium; if it does not, it shall be inferred that it is in equal parts."

such party, allowing a period to cure the cause of separation. If the party fails to comply within the contractually agreed period, it is automatically excluded. Many consequences of separation may result and should be contemplated in the contract, including how to handle the situation of the representatives of the separated party at the executive committee; how any assets contributed by the party before its separation, or profits already earned by such party, will be distributed; how the party will be replaced in the consortium; and if the other parties will be obliged to proportionally assume the excluded party's share in the venture.

- (7) The contract should address the right of a party to withdraw from the consortium, the manner in which such a right may be exercised, and consequences associated with withdrawal. Withdrawals may occur in many ways. The contract may stipulate that a party may not withdraw voluntarily without the other parties' consent, or that it may not withdraw until a certain time or phase of the venture has been completed. If a party withdraws voluntarily, the contract could provide that the party remains liable for all expenses accrued or incurred up to the date of withdrawal, plus all budgeted and approved expenses and any liabilities for actions before its withdrawal. The party should be required to give advance notice of its intention to withdraw. Also, the contract should address whether representatives of the withdrawing party will continue to have voting rights on matters on which that party maintains financial responsibility.
- (8) The contract should describe the liquidation phase of the consortium. Once the venture has been completed or agreements signed by the consortium with third parties have been terminated, the consortium should be liquidated. Liquidation involves the sale or disposition of all assets acquired by the consortium, the return of all assets temporarily assigned to the consortium, and the payment of all remaining liabilities. The balance, if any, should be distributed among the parties in agreed-to proportions. The contract also should contemplate which party is re-

sponsible for conducting the liquidation and should describe the liquidation procedure.

The Law does not require the above-discussed issues to be included in the consortium contract. Instead, it is the parties' responsibility to insert the necessary provisions into their agreement.

Even more than in the *asociación en participación*, the consortium is a contract in which most of the provisions governing the consortium are left to the will of the parties. A consortium contract can be brief and simple, or sophisticated and detailed. This decision is entirely up to the parties.

From an income-tax perspective, each party directly carries the burden of any losses and the benefit of any profits in the percentages agreed to by the parties.⁶⁷ The rights, duties, and obligations are individual, not joint or collective.⁶⁸ The parties should disavow any intention to create a relationship whereby they can be held liable for taxes derived from the actions of one another. While the manager of the consortium is usually charged with the responsibility of making all payments or distributions to third parties or to its own members, each party is responsible for reporting and paying its own income taxes derived from its share in the consortium.

III. OTHER MATTERS

It generally is recommended that the parties include in their *asociación en participación* or consortium contracts certain provisions that are not mentioned in the Law, but are in the best interest of the parties. These provisions may avoid misunderstandings that could arise in the course of the relationship being created.

A. Confidential Information

Most contracts provide that all data and information acquired during the contract will be kept confidential for a number of years, generally not less than two, after the termination of the

67. *Ley del Impuesto a la Renta*, Decreto Legislativo No. 774 at art. 14.

68. *Id.*

agreement. The generally accepted disclosure exceptions used in most confidentiality agreements are naturally permitted.

B. Force Majeure

Force majeure clauses usually are given little attention in preparing the agreement, but they should be considered carefully with respect to the obligations that every party acquires in the consortium agreement. During a force majeure event, the performance of an obligation is suspended. If, for any reason, one party is unable to perform due to a cause of force majeure applicable to it, the agreement should contemplate how the situation is to be solved to allow the venture to continue without the contributions committed by such party.

C. Applicable Law and Dispute Resolution

Particularly when the parties are domiciled in different jurisdictions, it is imperative to decide what law will govern the agreement and whether disputes will be resolved by the courts of the chosen jurisdiction or by arbitration. If arbitration is chosen, the arbitration procedure should be detailed in the agreement.

IV. CONCLUSION

When contemplating creating a business entity in Peru, parties should consider the benefits of an association contract. Both the *asociación en participación* and the consortium offer the parties a great deal of flexibility to create the framework of their entity. Because Peruvian law leaves many of the decisions involved in creating an association contract to the parties, the agreement should cover the various considerations outlined in this Article. When those considerations are addressed appropriately by the parties, an *asociación en participación* or a consortium can be an excellent form to conduct a new business activity in Peru.