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Changes to the Peruvian Merger Control Legislation

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The Peruvian Government modified certain provisions contained in the Peruvian Merger Control Legislation (“MCL”), approved by Urgency Decree N° 013-2019.

Summary:

Vacatio legis. On May 11, 2020, the Peruvian Government deferred the application of the MCL (originally on August 20, 2020) until March 1, 2021. Concentrations occurring prior to said date will not be subject to administrative authorizations, except for vertical or horizontal concentrations occurring in the electricity market, which will continue under their current regime until the new regulation comes into force. The statute will be in force for a period of five (5) years, unless it's made permanent by the Peruvian Congress.

Derogation of the “Newcomer Exemption”. The “Newcomer Exemption” contained in the previous MCL has been derogated. Hence, concentrations resulting in the acquisition of control by an economic agent, who prior to such concentration does not partake in the relevant market, will be required to be notified if the thresholds are surpassed.

“Failing firm” defense: The authority will consider if any of the companies involved in the concentration is a failing firm and if such transaction is needed in order to avoid exiting the market (rescue merger).

Executive regulation. The MCL will be supplemented by an executive regulation that shall be issued before November 19th, 2020.

Note: This article is intended to be a general summary of the Urgency Decree and does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific situation.

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