

# PERU

## LAW No. 28331

(Published in “El Peruano”, August 14)

### THE PRESIDENT OF THE REPUBLIC

WHEREAS:

THE PERMANENT COMMISSION OF THE CONGRESS OF THE

REPUBLIC

Has issued the following Law:

### FRAMEWORK LAW ON REGULATORY BOARDS FOR DENOMINATIONS OF ORIGIN

#### **Article 1.- Purpose of the Law**

The purpose of this Law is to establish the conditions for the constitution and management of Regulatory Boards for Appellations of Origin, which are responsible for administering appellations of origin that have been declared protected.

#### **Article 2.- Regulatory Boards**

Once the protection of an appellation of origin has been declared, in conformity with the provisions of Decision 486 of the Andean Community and other relevant provisions, its Regulatory Board may be authorized to begin operation.

#### **Article 3.- Associations which May Function as Regulatory Boards**

The INDECOPI Office of Distinctive Signs may authorize the operation, as Regulatory Boards, of organizations constituted as civil, non-profit-making associations which so request and which meet the requirements laid down in this Law. The said associations shall be entered in the respective public registry and may not engage in any activity of a political or religious nature or any other activity that is unrelated to their function as an administrator of the appellation of origin.

The above-mentioned civil associations shall comprise natural persons or legal entities which deal directly with the extraction, production and preparation of the product or products protected by the appellation of origin, who wish of their own free will to belong to such associations.

Public or private entities with a direct link to the products whose appellation has remained protected may also be members. Private-sector representatives shall form a majority of the members of such associations.

Producers who do not belong to the civil association authorized to operate as a regulatory board may use the corresponding appellation of origin, provided they meet the conditions laid down in applicable legislation in force and the Rules and Regulations of the respective appellation of origin.

#### **Article 4.- Statutes.**

Without prejudice to the legal provisions which apply to the civil association by reason of its nature and form, in order for its operation as a regulatory board to be authorized, the Statutes of the civil association shall contain:

- (a) the name, which may not be identical or similar to that of other entities in a way that might lead to confusion;
- (b) the aim or purpose, as it may not engage in activities outside the administration of the appellation(s) of origin in question;
- (c) the classes of associates, depending on the type of activities carried out;
- (d) the conditions for the acquisition or loss of the capacity of associate, as well as for the suspension of the rights of associate;
- (e) the rights and duties of the associates;
- (f) the governance and representation bodies of the civil association and their respective powers, as well as the rules relating to the convening of meetings, constitution and operation of bodies of a collegiate nature;
- (g) the property and resources covered;
- (h) the system for auditing the economic and financial management of the entity;
- (i) the fate of the property or resulting net assets, in the event of the body's liquidation, which should in no case give rise to division between the associates.

#### **Article 5.- Requirements for Authorization**

For the INDECOPI Office of Distinctive Signs to grant authorization for operation as a Regulatory Board, civil associations shall meet the following requirements:

- (a) The purpose of the administration must be a specific recognized appellation of origin;
- (b) It must be clear from the information provided to the INDECOPI Office of Distinctive Signs and the information obtained thereby that the civil association meets the necessary conditions to ensure compliance with the legal provisions and guarantee efficient administration of the recognized appellations of origin;
- (c) They must forward the draft Rules and Regulations for the appellation of origin, with a view to their approval by the INDECOPI Office of Distinctive Signs.

#### **Article 6.- Authorization for Operation of Regulatory Boards.**

Once compliance with the requirements laid down in this Law and the necessary conditions to represent the beneficiaries of the appellation of origin to be administered has been established, the INDECOPI Office of Distinctive Signs shall authorize the civil association to operate as a Regulatory Board, by means

of a duly reasoned decision, which must be issued no more than thirty (30) days after the application has been filed.

Once it has been approved or signed, the decision to grant or refuse authorization shall be published in the Legal Rules offprint of the Official Gazette "El Peruano".

#### **Article 7.- Right of Appeal**

Any natural person or legal entity that has been refused admission to the Regulatory Board may request that this decision be reviewed by the INDECOPI Office of Distinctive Signs.

#### **Article 8.- Governing Bodies of the Regulatory Boards**

The General Assembly shall be the supreme body of the Regulatory Board and shall elect the members of the Governing Board and the Oversight Committee. The Governing Board shall appoint the Director General as the representative of the association.

#### **Article 9.- Jurisdiction of the Regulatory Boards**

The scope of the jurisdiction of each Regulatory Board shall be determined as follows:

- (a) from a territorial perspective: by the respective production area;
- (b) with regard to products: by the products protected by the appellation of origin;
- (c) with regard to persons: by the persons authorized to use the appellation of origin.

#### **Article 10.- Powers of the Regulatory Boards**

The Regulatory Boards shall be entitled, as set out in their own Statutes and in conformity with the provisions of Article 6 of this Law, to exercise the rights entrusted to their administration and to assert them in any type of administrative or judicial proceedings, without presenting any instruments other than the said Statutes, and it shall be assumed, barring evidence to the contrary, that the rights exercised have been entrusted, directly or indirectly, by their respective associates.

#### **Article 11.- Functions of the Regulatory Boards**

The Regulatory Boards shall, inter alia, perform the following functions:

1. Draft proposals to amend the Rules and Regulations specific to the appellation of origin with regard to Article 5 of this Law, with a view to their approval by the INDECOPI Office of Distinctive Signs.
2. Guide, monitor and check the production and preparation of the products protected by the appellation of origin, verifying compliance with the technical standard or regulations, as the case may be, with a view to guaranteeing the origin and quality thereof for their commercialization on the domestic and international market.
3. Preserve the prestige of the appellation of origin on the domestic market and abroad, in coordination with the other public and private sectors, as appropriate.
4. Act with legal capacity to represent and defend the general interests of the appellation of origin.
5. Exercise the powers delegated by the INDECOPI Office of Distinctive

Signs.

6. Draw up a list of beneficiaries of the appellation of origin.
7. Exercise control over the annual production of the product or products covered.
8. Take the necessary steps to preserve the prestige and ensure the proper use of the appellation of origin administered.
9. Guarantee the origin and quality of a product, establishing a quality control system which includes analytical (physical, chemical and bacteriological, inter alia) or organoleptic examinations, as necessary.
10. Establish and apply sanctions to their associates for non-compliance with the Statutes, in accordance with the provisions thereof.

#### **Article 12.- Authorizations for the Use of an Appellation of Origin**

The Regulatory Boards shall grant authorization for the use of the appellation of origin they administer, in accordance with the powers delegated by the INDECOPI Office of Distinctive Signs and the corresponding provisions of relevant legislation.

#### **Article 13.- Scope of the Authorization of Use**

Authorization to use an appellation of origin which has been declared protected shall be requested from its Regulatory Board by persons who:

- (a) are directly involved in the extraction, production or preparation of the products distinguished by the appellation of origin;
- (b) carry out the said activity within the territory delimited by the declaration of protection;
- (c) meet the requirements laid down by the Rules and Regulations of each appellation of origin.

#### **Article 14.- Formalities for Requesting Authorization of Use**

Requests for authorization of use shall be addressed to the respective Regulatory Board, and must contain and be accompanied by the following:

- (a) Name and place of domicile of the applicant;
- (b) Any necessary powers of attorney;
- (c) Documents proving the existence and representation of the legal person applying;
- (d) The appellation of origin the applicant wishes to use;
- (e) Certification of the place or places of exploitation, production or preparation of the product, methods of production or preparation and links with the protected geographical area. Accreditation shall be granted via the inspection visit conducted by the natural person or legal entity designated by the Regulatory Board, in accordance with the INDECOPI Office of Distinctive Signs;
- (f) Certification of compliance with the technical standard or respective technical rules and regulations referring to the characteristics of the product which the appellation of origin aims to distinguish, including its components, as the case may be. Accreditation shall come with the certification carried out by the natural person or legal entity designated by the Regulatory Board, in accordance with the INDECOPI Office of Distinctive Signs;
- (g) Any other requirements stipulated by the Rules and Regulations specific to each appellation of origin.

### **Article 15.- Venues for the Production and Preparation of the Product**

In the event that the production and preparation of the product to be distinguished by an appellation of origin do not take place in the same geographical area, the applicant shall secure proof that both areas, for the production of the raw materials and for the preparation of the product, are authorized areas covered by the declaration of protection of the appellation of origin.

### **Article 16.- Corrective Action to Meet Requirements**

If the request for authorization of use does not meet the stipulated requirements, the Regulatory Board shall notify the applicant so that he may fulfill the same, granting him a non-renewable time limit of 15 days for this purpose.

### **Article 17.- Handling of Applications**

By means of a duly reasoned decision issued within fifteen (15) days as from the date on which the application was filed, the Regulatory Board shall grant or deny authorization for use. If such authorization is denied, the applicant may appeal the decision to the INDECOPI Office of Distinctive Signs.

The Regulatory Board is obliged to inform the INDECOPI Office of Distinctive Signs within five (05) days of authorization of use granted or renewed, as the case may be, with a view to the inclusion of the corresponding entry in the INDECOPI Registry of Authorization of Use for Industrial Property.

Authorization of use granted shall not take effect or be enforceable on others until it has been entered in the above-mentioned Registry.

### **Article 18.- Duration of Authorization**

In accordance with Decision 486 of the Commission of the Andean Community, authorization for the use of a protected appellation of origin shall last ten (10) years and may be renewed for identical periods, in accordance with the provisions of the Rules and Regulations of each appellation of origin.

### **Article 19.- Lapse of authorization**

Authorization for the use of a protected appellation of origin shall lapse if its renewal is not requested within the stipulated period of time.

### **Article 20.- Unlawful Use of the Appellation of Origin**

Use of an appellation of origin by unauthorized persons shall be deemed to constitute an infringement of industrial property rights, including cases accompanied by indications such as kind, type, imitation and other similar instances which create confusion in the consumer's mind.

The Regulatory Boards shall have available the necessary mechanisms for taking the corresponding legal action with the INDECOPI Office of Distinctive Signs and other competent entities, as well as enforcing compliance.

### **Article 21.- Revocation of Authorization**

When it has been shown that the appellation of origin is used in trade in a way that does not correspond to the guidelines set out in the respective declaration of protection, the INDECOPI Office of Distinctive Signs shall revoke the authorization of use, either *ex officio* or at the request of a party.

**Article 22.- Nullity of Authorization.**

The INDECOPI Office of Distinctive Signs may declare, *ex officio* or at the request of a party, that the authorization for the use of a protected appellation of origin is null and void if it was granted in violation of the relevant rules.

**Article 23.- Bringing into conformity**

Persons who were using an appellation of origin prior to the date of its declaration as such shall have one (01) year to apply for the corresponding authorization for use.

**Article 24.- Powers of the Office of Distinctive Signs with regard to Sanctions**

For the purposes of this system for the administration of protected appellations of origin, the INDECOPI Office of Distinctive Signs shall monitor the Regulatory Boards on an ongoing basis, and may require any type of information related to the activity of associates, order inspections or audits, examine administrative books and documents and appoint a non-voting representative to attend meetings of the deliberative, managing or oversight bodies or any other bodies provided for in the respective Statutes.

**Article 25.- Jurisdiction of the Office of Distinctive Signs with regard to Sanctions**

The INDECOPI Office of Distinctive Signs may impose sanctions on Regulatory Boards that infringe their own Statutes or regulations, or relevant legislation, or commit acts that affect the interests of the beneficiaries of the appellation of origin, without prejudice to the corresponding criminal sanctions or civil proceedings.

**Article 26.- Types of Sanctions**

The sanctions referred to in the foregoing Article may be:

- (a) a warning, which may have to be published in the Legal Rules offprint of the Official Gazette "El Peruano" at the infringer's cost.
- (b) a fine ranging from 1 to 150 U.I.T, depending on the gravity of the offense.
- (c) suspension of the authorities of the associate from the exercise of their functions, up to a period of five (5) years, with the designation of an Administrative Board in their stead.
- (d) cancellation of the operating authorization.

**Article 27.- Grounds for Cancellation**

The sanction of cancellation of operating authorization may only be applied in the following cases:

- (a) If it is established that the operating authorization was obtained through the falsification or alteration of data or documents, or through any other type of legal fraud.
- (b) If any fact that could have led to the refusal of the operating permit occurs or comes to light.
- (c) If the INDECOPI Office of Distinctive Signs was not informed, within the time limit provided for, about the authorizations of use granted.
- (d) If it is established that it is impossible for the entity to fulfill its corporate purpose.
- (e) If there is a recurrence of an offense that has already led to sanctions, within three (03) years prior to the recurrence.

In any of the above cases, except for those covered by in (a) and (e), there must be a prior reprimand by the INDECOPI Office of Distinctive Signs, which shall set a time limit of not more than three (03) months for the corresponding rectification or correction.

Cancellation of the operating authorization shall take effect thirty (30) days following its publication in the Legal Rules offprint of the Official Gazette "El Peruano". Proceedings for the grant of authorization of use which were under way on the said date shall be evaluated by the INDECOPI Office of Distinctive Signs.

**Article 28.- Appeal against an Administrative Decision**

Appeals for the review of decisions issued by the INDECOPI Office of Distinctive Signs may be lodged within fifteen (15) days following notification, and shall be accompanied by new evidence. Also within this period, appeals against judgment may be lodged against the decision putting an end to the proceedings.

**Article 29.- Repeal**

Any provisions which conflict with this Law are hereby repealed.

For communication to the President of the Republic for enactment.

Done at Lima on the twenty-third day of the month of July, two thousand and four.

HENRY PEASE GARCIA  
President of the Congress of the Republic

MARCIANO RENGIFO RUIZ  
First Vice-President of the Congress of the Republic

TO THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

THEREFORE

Publication and compliance are hereby ordered.

Done at the House of Government, in Lima, on the thirteenth day of the month of August, two thousand and four.

ALEJANDRO TOLEDO  
Constitutional President of the Republic

CARLOS FERRARO  
President of the Council of Ministers