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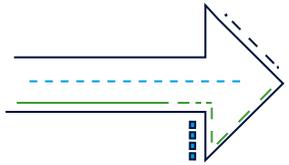
Article

Labor Cassation No. 35267–2023: Jurisprudential Doctrine on Paid Annual Leave

In Labor Cassation No. 35267–2023–Lima, the Supreme Court of Justice of the Republic established significant jurisprudential guidelines regarding the right to paid annual leave and its payment when the employee is unable to physically enjoy such leave within the legally established period.

BACKGROUND OF THE CASE

The doctrine developed in this cassation decision focuses on the interpretation and application of the rules governing the right to annual leave, specifically Article 25 of the Constitution and Legislative Decree No. 713, as well as the legal consequences arising when such leave is not effectively taken within the statutory timeframe.



Annual leave constitutes a fundamental labor right that accrues upon completion of one year of service, granting the employee thirty (30) calendar days of paid annual rest.

JUDICIAL DECISIONS BY INSTANCE

- **First and Second Instance:** The lower courts examined whether the employee was entitled to payment for annual leave not taken within the legally prescribed period, taking into account the vacation record and compliance with the applicable statutory requirements.
- **Cassation:** The Supreme Court established binding jurisprudential doctrine, clarifying that the right to paid annual leave—and consequently, to payment when the leave is not effectively taken—must be interpreted in accordance with the applicable labor regulations, particularly Legislative Decree No. 713, which safeguards both the right to annual leave and its economic compensation.

KEY PRINCIPLES ESTABLISHED

- **Right to Paid Annual Leave:** An employee is entitled to receive payment for annual leave when he or she does not physically enjoy such leave within the legally established period, provided that the statutory requirements for accrual of the benefit have been met.
- **Nature of the Right:** Such payment does not constitute an additional “bonus,” but rather the materialization of the constitutional and statutory right to paid annual rest, as recognized by the Constitution and the labor regulations governing rest periods.
- **Payment of Untaken Annual Leave:** Where an employee does not take annual leave in due time, the employer is obligated either to ensure the effective enjoyment of the leave or to provide the corresponding economic compensation for that period.
- **Employee Protection:** This doctrine seeks to prevent employees from being adversely affected by the employer’s failure to grant annual leave within the legally prescribed period, emphasizing that the right to rest and its corresponding remuneration cannot be undermined by business practices that contravene labor regulations.



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Article

Transfer Pricing Checklist: Is Everything Ready?

If you carry out or report transactions with related parties, entities located in non-cooperative low- or no-tax jurisdictions, or under preferential tax regimes, the first months of the year are critical for compliance purposes.

YOUR TO-DO LIST

- Updated comparability analysis.
- Executed and currently effective intercompany agreements.
- Properly documented transfer pricing policies.
- Support demonstrating that transactions are conducted at arm's length (market value).
- Benefit test analysis for services received.



KEY DATES TO REMEMBER

- **Before March:** Filing of the Informative Transfer Pricing Affidavit (DJAIR).
 - At the time of making adjustments for transactions within the scope of transfer pricing (if applicable).
 - Review of compliance with the benefit test for the deductibility of the expense.
- **June:** Deadline for filing the 2025 Local File.
- **October:** Deadline for filing the 2025 Master File and the 2025 Country-by-Country Report.
- **Throughout the year:** Contemporaneous documentation.

RED FLAGS OBSERVED BY SUNAT

- Transfer pricing studies prepared using outdated financial or comparables information.
- Inbound services lacking adequate support of the benefit test.
- Intangible transactions without proper technical and economic documentation.
- Agreements that do not reflect the actual conduct of the parties or the economic substance of the transactions.
- Inconsistencies, vague descriptions, or discrepancies in invoices.

OUR TIP OF THE YEAR



Do not wait for a tax audit to organize your transfer pricing documentation. The best defense strategy is to maintain robust, technically sound, and contemporaneous documentation from day one.



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Legal Regulations

Tax

- Resolution amending the General Procedure "Execution of Extraordinary Control Actions" CONTROL-PG.02 (Version 1).

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Legal Basis: Superintendency Resolution No. 000012-2026/SUNAT.

Effective: January 29, 2026.

Objective: This resolution amends Section IV; numerals 2, 3, 8, 9 and 11 of Section VI; numerals 2 and 3 of subparagraph A.1 and numerals 3 and 4 of subparagraph A.2 of paragraph A; numeral 3 of paragraph C; numeral 1 of paragraph D of Section VII; and Annexes I, III and V of paragraph IX of the General Procedure "Execution of Extraordinary Control Actions" CONTROL-PG.02 (Version 1).



Corporate

- Supreme Decree approving the National Multisectoral Foreign Trade Policy 2040.

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Legal Basis: Supreme Decree No. 010-2025-MINCETUR.

Effective: January 6, 2026.

Objective: Through Supreme Decree No. 010-2025-MINCETUR, the Ministry of Foreign Trade and Tourism (MINCETUR) approved the National Multisectoral Foreign Trade Policy 2040. This Policy aims to address the public issue related to the insufficient development of foreign trade in Peru, which results in: (i) reduced business competitiveness and productivity; (ii) limited participation of Peru in global trade; (iii) a low percentage of consolidated companies among exporters; and (iv) limited participation of Peruvian companies in global and regional value chains.

- Update of the minimum share capital of insurance brokerage companies and insurance auxiliaries for fiscal year 2026.

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Legal Basis: Circular No. AS-38-2026 | No. CS-43-2026.

Effective: January 1, 2026.

Objective: The Superintendency updates the minimum capital requirements applicable to insurance brokerage companies and insurance auxiliaries for fiscal year 2026, in accordance with the Regulation of the Registry of Intermediaries and Insurance Auxiliaries, Foreign Reinsurance Companies and Cross-Border Insurance Activities, approved by SBS Resolution No. 808-2019 and its amendments. Likewise, pursuant to the Thirty-Second Final and Complementary Provision of the General Law, the issuance and publication of this Circular formalize the updated capital thresholds applicable for the referred fiscal year.

- Supreme Decree amending the Regulation of Law No. 32069, General Public Procurement Law, approved by Supreme Decree No. 009-2025-EF.

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Legal Basis: Supreme Decree No. 001-2026-EF.

Effective: January 9, 2026.

Objective: This Supreme Decree amends the Regulation of Law No. 32069, General Public Procurement Law, previously approved by Supreme Decree No. 009-2025-EF. This Supreme Decree amends the Regulation of Law No. 32069, General Public Procurement Law, previously approved by Supreme Decree No. 009-2025-EF.

- Supreme Decree approving the Regulations of Law No. 32392, New General Tourism Law.

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Legal Basis: Supreme Decree No. 002-2026-MINCETUR.

Effective: January 18, 2026.

Objective: This Supreme Decree approves the Regulations of Law No. 32392, New General Tourism Law, which consists of nineteen (19) chapters, eighty (80) articles, thirty (30) final complementary provisions and one (1) complementary derogatory provision, forming an integral part of the Decree. The Regulation develops and details the provisions set forth in the new legal framework for the tourism sector, providing regulatory clarity and operational guidelines for its implementation.

- Resolution amending Circular No. S-668-2018, AFP-166-2018, the Regulation on Capital Requirements for Insurance and Reinsurance Companies and the Regulation on Technical Reserves for Claims.

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Legal Basis: SBS Resolution No. 00111-2026.

Effective: January 16, 2026.

Objective: This Resolution amends Circular No. S-668-2018, AFP-166-2018, concerning the "Methodology of updating rates applicable to the calculation of the capital required for definitive disability and survivor pensions under the collective risk administration policy model (SISCO)."

Specifically, numeral 1 "Scope" is modified, with the purpose of adjusting the regulatory framework applicable to capital requirements and technical reserves within the insurance and reinsurance system.

- Resolution approving the amendment of the Single Text of Administrative Procedures (TUPA) of the National Institute for the Defense of Competition and the Protection of Intellectual Property – Indecopi.

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Legal Basis: Superintendency Resolution No. 000007-2026/SUNAT.

Effective: January 22, 2026.

Objective: Resolution No. 000003-2026-PRE/INDECOPI, published on January 21, 2026 in the Official Gazette El Peruano, approves the amendment of INDECOPI's Single Text of Administrative Procedures (TUPA).

This amendment updates the compendium of administrative procedures under the entity's responsibility, regulating applicable procedures, requirements, deadlines and fees for individuals and companies, with the aim of enhancing administrative management, aligning it with current regulations and optimizing institutional service delivery.

Case Law

ORPE

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Resolution No. 0025-2025/SBN-ORPE.

Subject: Opposition to the Special Physical and Legal Regularization Procedure regarding the modification of the beneficiary of a right of use granted in favor of the National Program "Plataformas de Acción para la Inclusión Social – PAIS."

Summary: It is legally feasible to apply the special physical and legal regularization procedure provided in subsection l) of numeral 22.1 of Article 22 of the Consolidated Text of Law No. 29151 to modify the beneficiary of a right of use over a property granted to a sector assigned to a program or project, when such program has been transferred to another sector by express legal provision. This applies where both sectors have executed the corresponding delivery and reception records, and the purpose established in the original right of use remains unchanged.

Decision: To declare UNFOUNDED the opposition filed by the General Directorate of Supply of the Ministry of Economy and Finance.

CONSTITUTIONAL COURT

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Judgment: Amparo Proceeding No. 22218-2024 Lima.

Subject: Amparo Action.

Summary: Appeal filed by Sociedad Minera Cerro Verde S.A.A. against the judgment dated May 22, 2024, which declared the amparo claim inadmissible in proceedings brought against the Judiciary.

Decision: To declare the constitutional amparo claim INADMISSIBLE in the proceedings brought by Sociedad Minera Cerro Verde S.A.A.

CONSTITUTIONAL COURT

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Judgment: Appellate Judgment No. 25234-2025 Lima.

Subject: Amparo Action.

Summary: Appeal filed by the claimant, Julia Soledad Méndez Valdez viuda de Bazán, against the judgment issued by the First Constitutional Chamber of the Superior Court of Justice of Lima, which declared the amparo claim inadmissible.

Decision: To declare the amparo action INADMISSIBLE filed by Julia Soledad Méndez Valdez viuda de Bazán

CONSTITUTIONAL COURT

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Judgment: Appellate Judgment No. 25428-2025 Lima.

Subject: Amparo Action.

Summary: Appeal filed by Joscham Sociedad Anónima Cerrada against the judgment that had dismissed its amparo claim, challenging the constitutionality of the contested judicial decision.

Decision: To declare the amparo claim FOUNDED filed by Joscham Sociedad Anónima Cerrada.

JUDICIARY

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Cassation No. 230–2020 Lima.

Subject: Annulment of Arbitral Award.

Summary: Judicial review of the reasoning of an arbitral award does not entail a reassessment of the merits of the dispute, but rather verification that arbitrators exercised their adjudicative function within the bounds of rationality, justification and absence of arbitrariness, in accordance with due process guarantees, particularly arbitral due process.

Decision: To declare UNFOUNDED the cassation appeal filed by Consorcio San Pedro.

JUDICIARY

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Cassation No. 318–2020 La Libertad.

Subject: Ineffectiveness of Legal Act.

Summary: The Paulian action (ineffectiveness action) is not aimed at transferring an asset directly from the debtor to the creditor, but rather at ensuring payment of an obligation by declaring ineffective a disposal act executed between the debtor and a third party acting in bad faith, thereby preventing the reduction of the debtor's assets and safeguarding the creditor's right to collect.

Decision: To declare UNFOUNDED the cassation appeal filed by Gricelle Mariela Farfán Cabada.

JUDICIARY

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Cassation No. 1515–2020 Lima.

Subject: Recovery of Possession.

Summary: The transfer of a commercial stand carried out in 1999 by an association member did not generate property rights, as it contravened the association's bylaws. The appellate judgment was duly reasoned in concluding that the defendant only exercised possession without legitimate title.

Decision: To declare UNFOUNDED the cassation appeal filed by Edgar Rolando Vilcamich Muñoz.

JUDICIARY

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Cassation No. 1740–2020 Lima Norte.

Subject: Nullity of Legal Act.

Summary: The cassation appeal was declared unfounded as the lower courts properly substantiated the absence of elements constituting unlawful purpose, absolute simulation or violation of mandatory rules or public order, and therefore the questioned sale contracts were not null and void.

Decision: To declare UNFOUNDED the cassation appeal filed by Sergio Elías Ocaña León.

JUDICIARY

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Cassation No. 4640-2021 Lambayeque.

Subject: Damages.

Summary: The judgment incurred in apparent reasoning by relying on incorrect legal provisions and inappropriate arguments lacking minimum justification, reasonableness and logical coherence, thus violating the duty to provide proper grounds.

Decision: To declare the cassation appeal FOUNDED filed by A.C. Medic Hum S.A.

JUDICIARY

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Cassation No. 4656-2021 Tumbes.

Subject: Third-Party Ownership Claim.

Summary: The duty to provide proper reasoning in judicial decisions was breached, as the resolution failed to adequately justify its conclusions based on the evidence and arguments presented, thus affecting due process guarantees.

Decision: To declare the cassation appeal FOUNDED filed by Stewart Olivares Guevara.

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Cassation No. 17501-2023 Loreto.

Subject: Mischaracterization of Contract and Others.

Summary: The right to due process requires judges to provide objective reasons grounded both in applicable law and in duly proven facts, following a joint assessment of the evidence submitted during the proceedings.

Decision: To declare the cassation appeal FOUNDED filed by Oscar Cárdenas Meléndez.

JUDICIARY

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Cassation No. 13372-2023 La Libertad.

Subject: Reinstatement and Others.

Summary: The right to proper reasoning of judicial decisions, as part of due process, is satisfied when the appellate court addresses the essential arguments raised by the parties and complies with constitutional standards of justification.

Decision: To declare the cassation appeal UNFOUNDED filed by Laboratorios Caferma S.A.C.

JUDICIARY

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Cassation No. 13579–2023 Loreto.

Subject: Reinstatement for Unjustified Dismissal and Others.

Summary: Due process comprises the set of formal and substantive guarantees that must be observed in judicial or administrative proceedings to ensure a decision consistent with the legal system and fundamentally fair.

Decision: To declare the cassation appeal FOUNDED filed by Julio César López Vásquez.

JUDICIARY

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Cassation No. 5284–2023 Lambayeque.

Subject: Reinstatement for Unjustified Dismissal and Others.

Summary: Law No. 28175, Framework Law on Public Employment, establishes merit and capacity as essential principles governing entry, permanence, remuneration improvements and promotion within public employment.

Decision: To declare the cassation appeal PARTIALLY FOUNDED filed by the Lambayeque Healthcare Network of ESSALUD.

JUDICIARY

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Cassation No. 26502–2022 Sullana.

Subject: Mischaracterization of Contract and Others.

Summary: Due process entails compliance with formal and substantive guarantees in all judicial or administrative proceedings to ensure a lawful and fair decision.

Decision: To declare the cassation appeal UNFOUNDED filed by Otto Távora Polo.

JUDICIARY

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Cassation No. 7074–2023 La Libertad.

Subject: Payment of Employment Benefits and Others.

Summary: Due process entails compliance with formal and substantive guarantees in all judicial or administrative proceedings to ensure a lawful and fair decision.

Decision: To declare the cassation appeal UNFOUNDED filed by Otto Távora Polo.

JUDICIARY

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Cassation No. 2383–2022 Piura.

Subject: Preferential Third-Party Payment Claim.

Summary: The reviewed judgment violated the principle of proper reasoning of judicial decisions, as it failed to adequately justify the legal and factual premises supporting its conclusion, warranting nullity and issuance of a new judgment.

Decision: To declare the cassation appeal FOUNDED filed by Construcciones y Servicios Generales Riofrio & Riofrio S.A.C.

JUDICIARY

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Cassation No. 3783–2019 Lima.

Subject: Enforcement of Guarantees.

Summary: The appellate chamber violated the claimant's right to effective judicial protection and due process by failing to issue a valid ruling on the merits in accordance with the principle of procedural congruence, requiring annulment and issuance of a new decision.

Decision: To declare the cassation appeal FOUNDED filed by Banco Pichincha.

JUDICIARY

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Cassation No. 1919–2022 La Libertad.

Subject: Enforcement of Guarantees.

Summary: Judicial approval is not required for a settlement agreement to be valid; judicial homologation operates as a procedural mechanism for terminating the proceedings and granting res judicata effect, but does not condition the validity of the agreement itself.

Decision: To declare the cassation appeal FOUNDED filed by Scotiabank Perú S.A.A.

JUDICIARY

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Cassation No. 40974–2023 Ica.

Subject: Reinstatement for Unjustified Dismissal.

Summary: Dismissal is presumed to be motivated by pregnancy when it occurs during gestation or within ninety days after childbirth, birth-related consequences or breastfeeding, and it is not required that the employee notify the employer in writing of her pregnancy.

Decision: To declare the cassation appeal PARTIALLY FOUNDED filed by Olenka Thamara Salvatierra Hernández.

JUDICIARY

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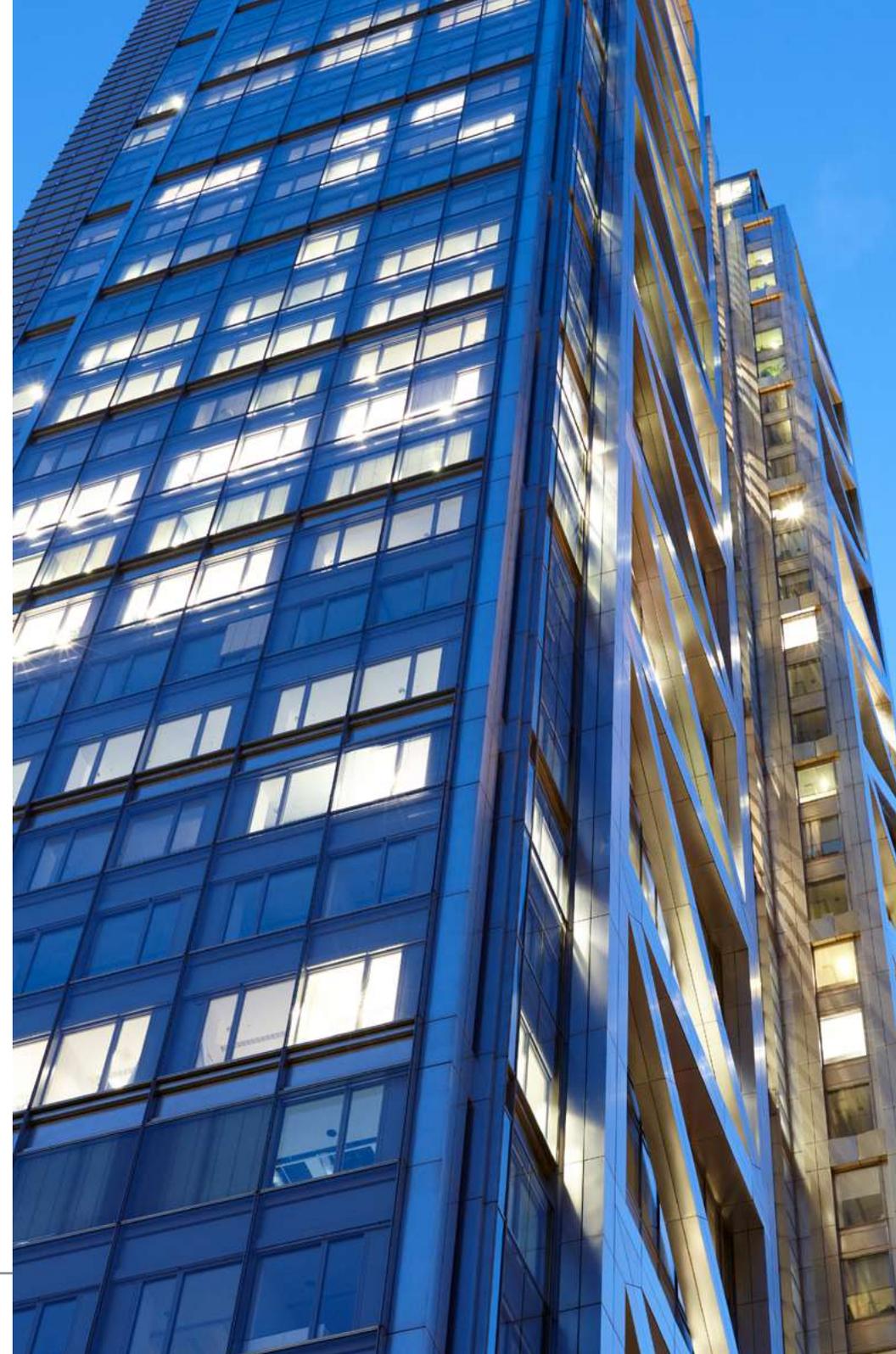


Cassation No. No. 25972-2023 Loreto.

Subject: Mischaracterization of Contract and Others.

Summary: Fixed-term employment contracts are atypical by nature and must be justified by market needs, increased production or the temporary or accidental nature of the service or work, except for intermittent or seasonal contracts which may be permanent by nature.

Decision: To declare the cassation appeal FOUNDED filed by Kelly Navarro Castro.



Reports

SUNAT

REPORT NO. 000131-2025-SUNAT/7T0000

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Subject: Institutional inquiry regarding the meaning and scope of tax regulations.

Conclusion:

The failure to timely file the PDB – Exporters does not constitute an impediment to the offsetting of the Favorable Monthly Balance (SFMB) against Income Tax advance payments and the annual regularization payment, as regulated under Article 35 of the VAT Law, with respect to the tax period subject to compensation.

SUNAT

REPORT NO. 000164-2025-SUNAT/340000

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Subject: Institutional inquiry regarding the meaning and scope of customs regulations.

Conclusion:

It is legally permissible to declare as consignee in the Import for Consumption Customs Declaration (DAM), filed under the advance clearance modality, the purchaser indicated in the commercial invoice, even if the financial intermediary bank has not endorsed the transport document, provided that additional documentation evidences the purchaser's status as buyer and final consignee. Subsequently, the endorsed transport document in favor of the importer must be incorporated into the documentation digitally transmitted for the declaration's numbering.

SUNARP

RESOLUTION OF THE PRESIDENT OF THE REGISTRATION COURT NO. 005-2026-SUNARP/PT

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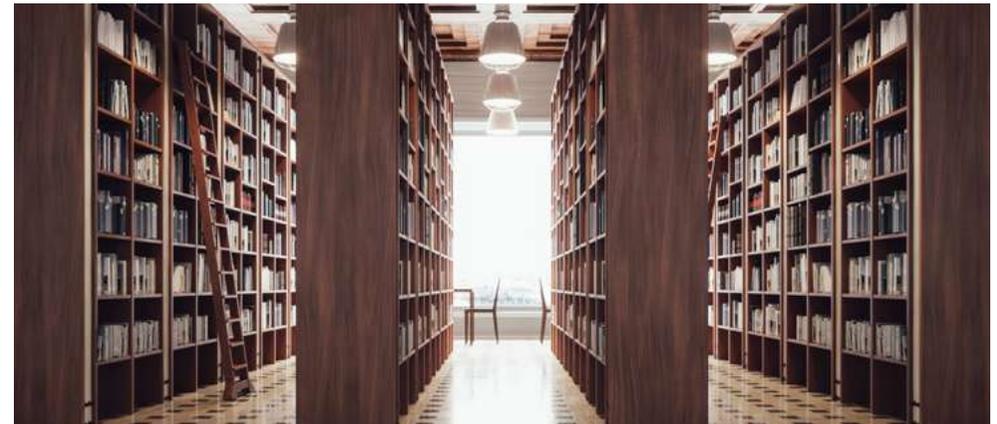


Subject: Ordinary session of the CCCXII (312th) Plenary of the Registration Court.

Conclusion:

In the case of the extinction of a corporation or a sole proprietorship with limited liability, the omission of any of the requirements established under Article 421 of the General Corporations Law and Article 91 of Decree Law No. 21621 constitutes a rectifiable defect for registration purposes. This criterion is supported by Resolutions No. 5568-2025-SUNARP-TR, No. 5569-2025-SUNARP-TR, and No. 5586-2025-SUNARP-TR.

The provision must be applied to the specific case, considering the procedural record, the arguments raised by the parties, and the matters challenged through the respective appeals.



If you want more information or have any questions,
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