

# INFOCARD

## Invest in Peru<sup>1</sup>

Last updated in October 2022

**This infocard aims to provide an overview of foreign investment in Peru and the legal framework**

### 1. General Framework for Foreign Investment

#### 1.1 Context

Since the adoption of a profound economic reform program in the early 1990's, which established an open and rule-based market economy, Peru has been one of Latin America's best performing countries in terms of economic growth and social development.<sup>2</sup> A main component of the reform was the introduction of a friendly business environment for private investment, anchored on a sound legal framework aiming to attract foreign investment and helped by stable macroeconomic policies, trade openness, free-market policies and the promotion of economic sectors with great potential to attract foreign investors. As of 2021, the stock of foreign direct investment (FDI) in Peru amounted to US \$ 124.2 billion, representing 55.6 per cent of the country's gross domestic product (GDP).<sup>3</sup>

Until 2012, private investment was one of the main axes of Peru's economic growth. However, in the last decade, private sector-led investment has lost dynamism and its relevance has diminished, due in part to the sluggishness of the global economy, domestic political instability and consequent economic uncertainty, particularly since 2017. In 2020, private investment represented 17.4 per cent of the country's GDP, its lowest level since 2009, due to the impact of the COVID-19 pandemic. In 2021, the country experienced a rebound in private investment: it reached 21 per cent of GDP, a 37.4 per cent increase in comparison to the previous year (see Chart 1). For 2022, it is expected that private investment will stall.<sup>4</sup>

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<sup>1</sup> The information contained in this infocard is only general. For more detailed info, please contact the Commercial Offices of the Member States and the bilateral Chambers in Lima.

<sup>2</sup> See for example Peru: Staying the course of economic success. Editado por Alejandro Santos y Alejandro Werner. FMI, 2015.

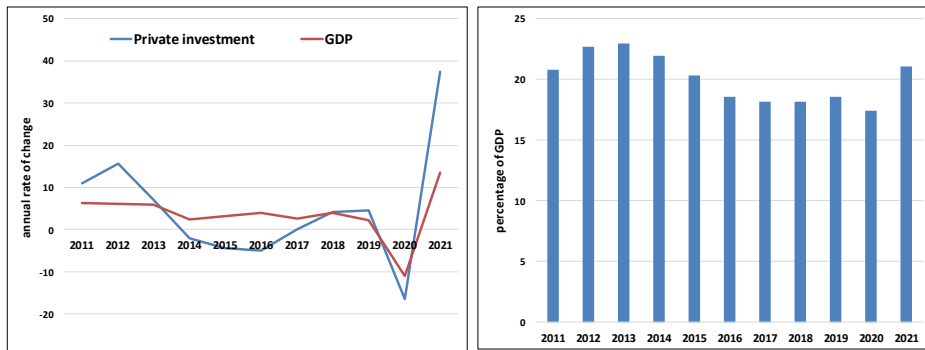
<sup>3</sup> Central Bank of Peru (BCRP). This data includes, in addition to capital contributions and share capital purchases, reinvestment of profits and net lending to the parent company.

<sup>4</sup> See the Inflation Report of June 2022 of the Central Reserve Bank of Peru and the Multiannual Macroeconomic Framework of August 2022 of the Ministry of Economy and Finance.

**Chart 1: Peruvian private investment: 2011-2021**

(a) Annual real variations %

(b) Percentage of GDP



Source: Central Reserve Bank of Peru.

Regarding international comparisons, IDM’s World Competitiveness Report 2022<sup>5</sup>, provides important indicators on the strengths and weaknesses of Peru in relation to other 62 countries. The ranking is built up on four main areas, which, in turn, are divided across 20 different indicators. Overall, Peru ranks 54 in the general index, maintaining that position since 2018. Peru ranks 40<sup>th</sup> in the economic performance indicator, while in the other dimensions performs less favourably: 52<sup>nd</sup> in government efficiency, 53<sup>rd</sup> in business efficiency, and 59<sup>th</sup> in infrastructure, its worst position (see Table 1).

**Table 1: IDM World Competitiveness Report 2022 - Peru rankings**

	Area	Rank
<b>Economic performance</b>	Domestic economy	20
	International trade	55
	International investment	47
	Employment	20
	Prices	28
<b>Government efficiency</b>	Public finance	28
	Tax policy	27
	Institutional framework	56
	Business legislation	53
	Societal framework	58
<b>Business efficiency</b>	Productivity efficiency	61
	Labor market	27
	Finance	58
	Management practices	42
	Attitudes and values	46
<b>Infrastructure</b>	Basic infrastructure	54
	Technological infrastructure	61
	Scientific infrastructure	60
	Health and environment	54
	Education	54

Source: IDM World Competitiveness Report 2022

Political instability, corruption, and social conflict have negatively affected Peru’s investment climate. Since 2016 Peru has had five presidents, Congress removed three, and there has been

<sup>5</sup> Elaborated by the International Institute for Management Development

continuous confrontation between the executive and legislative branches of government affecting governability. In addition, governments have been embroiled in corruption scandals. Political instability has been accentuated since the inauguration of current President Pedro Castillo, who was narrowly elected in 2021 and is allegedly implicated in corruption scandals. Transparency International has ranked Peru 105<sup>th</sup> out of 180 countries in terms of prevalence of corruption.<sup>6</sup> As of July 2022, 207 social conflicts have been officially reported, of which 158 are active and 49 latent, with more than half of them in the mining sector, which is the main recipient of foreign investment.<sup>7</sup> Since the Castillo administration took office in July 2021, the Executive Branch has maintained contentious relations with Congress and there have been continuous changes in senior government positions. In just over a year there have been 5 cabinets, more than 70 ministers and the challenges in the recruitment practices of the public administration have led the three main risk rating agencies (Fitch, Moody's and S&P) to downgrade sovereign credit ratings from Peru. On the one hand, they have maintained Peru's investment grade<sup>8</sup>, however, in October Fitch downgraded the outlook from stable to negative due to the governance situation in Peru.<sup>9</sup>

On the side of the COVID pandemic, which produced a contraction of the economy of 11 per cent in 2020, together with the domestic political instability, social unrest, and the developments in the world economy, have had a negative impact on its growth prospects. The BCRP, the Ministry of Economy and Finance, as well as independent analysts estimate that growth rates in coming years will be notably lower than those experienced in the past, hovering around 3 per cent, partly as result of the stagnation of private investment, including foreign direct investment.

On the upside, the individual Accession Roadmap for Peru to accede to the OECD, which means the beginning of negotiations, was adopted in June 2022. It establishes the terms, conditions, and process for accession. This process will demand a rigorous evaluation of Peru's regulatory frameworks and practices by more than 20 OECD technical committees, covering a wide range of policy areas, including trade and investment, public governance, integrity and anti-corruption in the public sector, and environmental protection. Whilst there is no formal deadline for the completion of the accession processes, it will depend on the speed that the government of Peru can adjust to the OECD's expectations, standards, and best practices. Previous accession processes took from three to five years. The process to accede to the OECD, fostering measures to converge with international standards and best practices, might contribute to address some of the weaknesses identified in the IDM Competitiveness Report, improving the investment environment in the country.

## 1.2 Main legal domestic framework

Peruvian policies and its legal regime seek to encourage foreign investment. The principle of

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<sup>6</sup> 2021 Corruption Perception Index.

<sup>7</sup> Defensoría del Pueblo. Reporte de Conflictos Sociales. July 2022.

<sup>8</sup> Ministerio de Economía y Finanzas. Nota de Prensa. Available at:

[https://www.mef.gob.pe/es/?option=com\\_content&language=esES&Itemid=101108&view=article&catid=100&id=7145&lang=es-ES](https://www.mef.gob.pe/es/?option=com_content&language=esES&Itemid=101108&view=article&catid=100&id=7145&lang=es-ES)

<sup>9</sup> On 20 October 2022, FitchRatings publishes the following note explaining that change: Fitch Revises Peru's Outlook to Negative from Stable; affirms at 'BBB'. <https://www.fitchratings.com/research/sovereigns/fitch-revises-peru-outlook-to-negative-from-stable-affirms-at-bbb-20-10-2022>

*national treatment*<sup>10</sup> is engrained in the country's 1993 Constitution, preventing *de jure* discrimination against foreign investors or investments. In 1991, several laws were enacted to promote private investments, such as the *Foreign Investment Promotion Law* (Legislative Decree N° 662) and the *Framework law for the growth of private investment* (Legislative Decree 757), which are still in force.<sup>11</sup> The legal framework allows foreign investors to enter into Legal Stability Agreements with the state guaranteeing that future legal and regulatory changes will not affect the conditions under which the investment decision was made. These agreements guarantee investors and companies in which they participate the stability of: the tax regime referred to income tax; exchange rate regimes, free availability of foreign exchange and free remittance of capital and profits; and, the labour-hiring regime.

The Foreign Investment Promotion Law (Legislative Decree N° 662) provides a broad definition of investment,<sup>12</sup> like the one included in most trade agreements covering establishment of investment agreements, such as the agreements with the US, Singapore, and Canada among other. In turn, the Framework Law for the growth of private investment (Legislative Decree 757) guarantees free enterprise to foreign investors in all sectors of economic activity, except in those explicitly indicated by Law, and in any of the business or contractual forms permitted by the Constitution and the Laws. It establishes rights, guarantees and obligations that are applicable to all natural or juridical persons, national or foreign, who are holders of investments in the country. Its norms require mandatory compliance by all State agencies at all levels.

These two laws were implemented through Supreme Decree N° 162-92-EF of October 1992, which, among other issues, details the rights of investors and the investments that are guaranteed by law (see Table 2).

<p style="text-align: center;"><b>Table 2</b> <b>PERU: LEGAL RIGHTS OF FOREIGN INVESTORS</b> <b>DS No 162-92-EF Title I and II</b></p>		
N°	Rights	Description

<sup>10</sup> According to Article 63 of the Political Constitution of Peru, "Domestic and foreign investment are subject to the same conditions."

<sup>11</sup> Modified by Supreme Decree 162-92-EF of October 1992 and Law No 27342 of September 2000.

<sup>12</sup> The Foreign Investment Promotion Law defines investment as:

- a) Contributions to the capital of a new or existing company in freely convertible currency or in physical or tangible goods;
- (b) Investments in national currency from resources eligible to be remitted abroad;
- (c) The conversion of external private obligations into shares;
- (d) Reinvestments carried out in accordance with the legislation in force;
- (e) Investments in property physically located in the territory of the Republic;
- (f) Intangible technological contributions, and patented or non-patented know-how;
- (g) Investments for the acquisition of securities, documents and financial papers listed on stock exchanges or bank certificates of deposit in national or foreign currency;
- (h) Resources allocated to joint ventures or similar contracts without this entailing capital contribution and that corresponds to commercial operations of a contractual nature.

<b>1</b>	<b>Equal treatment under the law</b>	The right to receive national treatment. Laws and regulations cannot discriminate between investors or companies based on domestic or foreign share capital ownership.
<b>2</b>	<b>Private property</b>	The right to private property of foreign investors is not subject to restrictions, beyond those established by Peru's Political Constitution.
<b>3</b>	<b>Arbitration</b>	The right to resort to arbitration to resolve disputes.
<b>4</b>	<b>Freedom of trade</b>	The right of freedom to trade and industry, and right of freedom to export and import.
<b>5</b>	<b>Remittances</b>	The right to transfer profits or dividends abroad, in freely convertible currencies, without prior authorization from the Central Government or decentralized governing bodies. The right is contingent upon the payment of the applicable taxes and the goods must be registered with the competent national entity.
<b>6</b>	<b>Exchange rate</b>	The right to use the most favourable exchange rate on the market for the applicable type of transaction after the foreign investment has been registered with the competent national entity and upon payment of the corresponding taxes.
<b>7</b>	<b>Re-export of capital</b>	The right to the free re-export of invested capital in the case of sale of shares, reduction of capital or partial or total liquidation of investments.
<b>8</b>	<b>Domestic credit</b>	Unrestricted access to domestic credit, under the same conditions as domestic investors.
<b>9</b>	<b>Royalties</b>	The free contracting of technology and remittance of royalties.
<b>10</b>	<b>Acquisition of shares</b>	The freedom to acquire shares owned by domestic investors, including majority shares.
<b>11</b>	<b>Insurance</b>	The ability to contract insurance services based abroad for investments in Peru.
<b>12</b>	<b>Entrepreneurial</b>	The right to choose freely the form of business constitution.
Source D.S. N° 162-92-EF		

Foreign investment, with few exceptions (see Table 3) is allowed in all sectors of economic activity and under any of the corporate forms recognized by domestic legislation. No special approval or registration before investing is required. Moreover, no minimum limits apply to investment and to the degree of shares ownership or managerial control. In addition, there are no performance obligations or operating restrictions that apply exclusively to FDI.

Table 3 Limitations to Foreign Investment in Peru		
N°	Activity	Limitation
1	Acquisition of private property	Foreigners may not own or acquire, directly or through third parties; mines, lands, forests, water bodies, fuels, or energy sources within a <b>50 km</b> distance of national borders, except with authorization by Supreme Decree.
2	Local commercial aviation	Activity reserved for Peruvian natural and legal persons. <b>51 per cent</b> of the share capital must be Peruvian-owned and under the real and effective control of shareholders or partners of Peruvian nationality, with permanent domicile in Peru. This limitation does not apply to the enterprises constituted under the Law No. 24882 which may maintain the ownership percentage set in this law (70 per cent of foreign ownership) Six months after the company is authorised to provide commercial transportation services, foreigners may own 70per cent of the company's capital.
3	Broadcasting services	Participation of foreigners may not exceed <b>40 per cent</b> of the total shares, shareholdings, or number of associates. A foreigner may not own a broadcasting service directly or through a one-person company. A foreigner be owner or shareholders in a radio or television broadcasting enterprise in their country of origin. If a foreign national is, directly or indirectly, a shareholder, partner, or associate in a corporation, that corporation may not hold a broadcasting authorisation in a zone bordering that foreign national's country of origin
4	Transport of hydrocarbons by sea	Reserved up to <b>25 per cent</b> for Peruvian Navy vessels, for reasons of national security and defence.
5	Water transport	Until 2018, commercial maritime cabotage was reserved exclusively for national merchant ships. However, this restriction has been <b>suspended</b> for a period of three (03) years, since the entry into force of Legislative Decree N° 1413, i.e. as of 7 August 2019.

Source: List of Non-conforming measures for investment and services. Scheduled of Peru in Annex 1 to the Trade Promotion Agreement with the US.

Although foreign investment must be registered with PROINVERSION,<sup>13</sup> the law does not establish a fixed deadline or penalty for those who fail to comply with this requirement. According to Article 20 of the Foreign Investment Promotion Law, the rights of foreign investors to remit capital and dividends abroad and to convert foreign currency at the best exchange rate are contingent to registration. However, this law was enacted before the 1993 Constitution, which, in its article 63, provides that foreign and domestic investments must receive equal

<sup>13</sup> The Peruvian State Agency that promotes private investment, in particular conducts project processes under Public Private Partnerships (PPPs) and promotes public investment processes with the private participation of the private sector through the Works for Taxes scheme.

<https://www.proinversion.gob.pe/modulos/JER/PlantillaStandard.aspx?are=0&prf=0&jer=5850&sec=1>

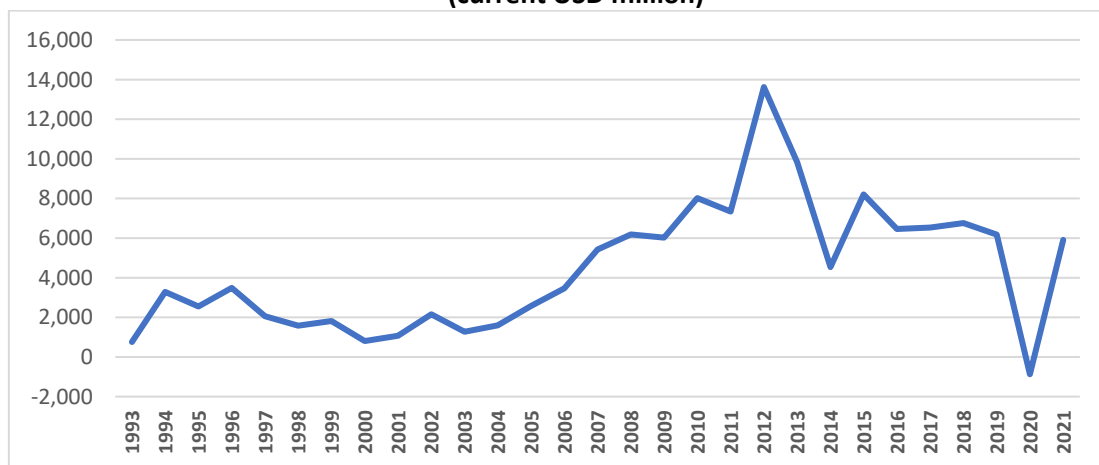
treatment ; hence, investment registration is, in practice and by law, not a condition for the exercise of any of the rights of foreign investors.

## 2. Foreign Direct Investment evolution in Peru

During the 80's, FDI inflows into the country were negligible. Following the economic reforms undertaken in the 1990s and the subsequent stabilization of the economy, Peru began to receive a continuous and increasing flow of FDI, attracted by the promotional legal framework, the economic stability and the boom in commodity prices that provided capital inflows and loans to sectors such as mining and hydrocarbons.

FDI acquired strong dynamism since 2003, peaking its stock in 2012. Since this latter year, a reversal trend began due to the deterioration of the terms of trade, which worsened after the political crisis that arose in 2016 (see Chart 2). Between 2012 and 2021, FDI inflows into the country have decelerated, growing the stock of FDI at an annual rate of 5.9 per cent during that period, well below the economic boom years.

**Chart 2: Inflows of FDI 1993-2021  
(current USD million)**



Source Central Reserve Bank on Peru.

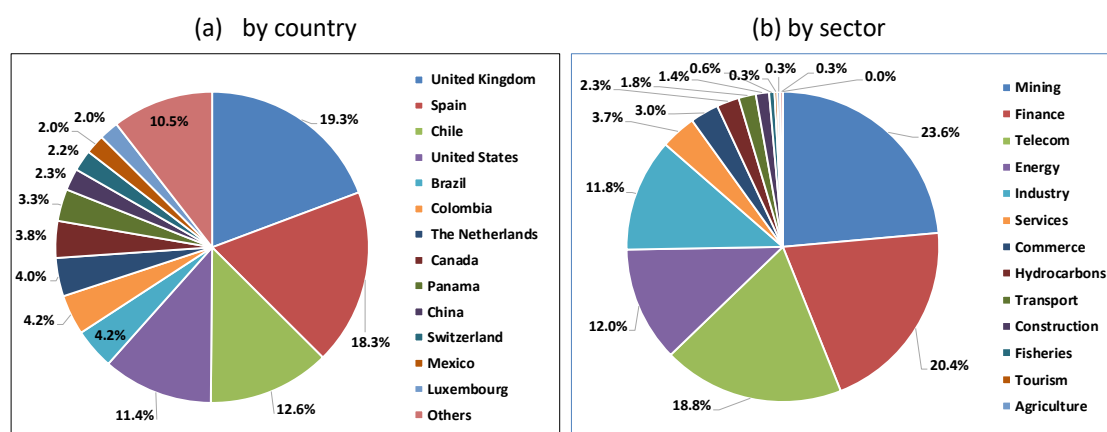
Besides greenfield investment, an important venue of FDI in Peru has been the purchase, either total or partially, of Peruvian firms by foreign investors. According to the Transactional Track Record (TTR), during the period 2017-2021, 605 transactions took place in which foreign investors acquired total ownership or share participation in Peruvian firms in different sectors of the economy.<sup>14</sup> In terms of value of the transactions, the most important sectors have been mining, energy, technology sector, real estate, and manufacture.

<sup>14</sup> Transactional Track Record (TTR) various reports. The reports on Peru can be found in: <https://www.ttreCORD.com/es/publicaciones/informe-por-mercado/informe-mensual-peru/>

In 2021, FDI recovered from the sharp contraction experienced in 2020 due to the COVID pandemic, when only US \$ 870 million of FDI were registered. In 2021, FDI inflow to Peru reached US \$ 5.9 billion (see Chart 2). However, the future performance of private investment, including FDI is uncertain.<sup>15</sup> Even though there are important projects in the pipeline, particularly in mining, in agroindustry and real estate, and there are several large infrastructure projects being promoted by the government that could be implemented through public-private partnerships (PPPs), the current political instability and uncertainty could act as a deterrent of major investment decisions.<sup>16</sup>

It is important to note that FDI data from PROINVERSION only includes registered capital contribution and share capital purchases – i.e. profit remittances and long-term loans are not included. On this basis, the stock of FDI amounted in 2021 to US\$ 29.2 billion. Since not all investments are registered, this statistic underestimates the total amount of foreign investment in Peru. However, this data offers a clear picture of the sectors that have attracted FDI and the country of origin of the investors. FDI is mainly in mining, finance, telecommunications, energy and services, with European investors accounting for 50.8 per cent of the total, followed by Latin American investors with 23.7per cent, and the USA with 11.4 per cent (see Chart 3).

**Chart 3: Stock shares of Peruvian Foreign Direct Investment: 2019**  
(Only capital contributions and share capital purchases)



Source: PROINVERSION

### 3. Other issues of interest

#### *Expropriation*

The Peruvian Constitution guarantees the inviolability of private property. The Constitution forbids expropriation except in cases considered of public interest or for national security, and following a due process. According to Article 70 of the Constitution, the State can only expropriate through a judicial process or prior mandate of the law. Expropriation can only proceed after payment of compensation, including for damages. Compensation for expropriation must be made on fair market value.

<sup>15</sup> Instituto Peruano de Economía. <https://www.ipe.org.pe/portal/la-inversion-privada-caera-9-este-ano/>

<sup>16</sup> There are projects worth US \$ 53 billion in the mining sector and, according to PROINVERSION, there are around 30 mature PPP projects that would amount US \$ 7.7 Billion



### ***Legal Stability Agreements and Investment Contracts***

Foreign investors have recourse to signing Legal Stability Agreements as mentioned above. In terms of the amount of investments, a minimum investment of USD 10 million is required for mining and hydrocarbons, and USD 5 million for other sectors. Investments may take place within 2 years of signing the agreement.

Moreover, investors can subscribe investment contracts with the state, which have the force of Law. These contracts provide for the rights and obligations of the investor and the state cannot unilaterally modify them. This type of contract has been widely used for mining investments.<sup>17</sup>

### ***Bilateral Investment Treaties***

Bilateral Investment Treaties (BITs)<sup>18</sup> are international agreements concluded between two States, aimed at promoting FDI, establishing conditions that ensure the stability of the applicable legal regime at the time of conclusion of the agreement, in addition to guaranteeing the rights of foreign investors. BITs commonly include investor-state **dispute resolution mechanisms** through arbitration, which guarantees that the rights of investors will be protected by means of due process when any dispute arises. In addition, in various Free Trade Agreements concluded by Peru, investment chapters have been included<sup>19</sup>.

To date, Peru has signed 34 BITs. Many of them have been with **European countries** namely, Germany, Denmark, Spain, Finland, France, Italy, the Netherlands, Portugal, the United Kingdom, the Czech Republic, Romania, Sweden and the Belgium-Luxembourg Economic Union.<sup>20</sup>

### ***Trade Agreement between the European Union and its Member States, of the one part, and Ecuador, Colombia and Peru, of the other part.***

Peru is a part of 23 trade agreements, which covers 86 per cent of Peruvian trade. Some of these agreements, including the one with the US, include investment provisions in order to protect investors and eliminate restrictions on FDI. The agreement with the EU does not include a chapter on investment as such. Title IV on Trade in Services, Establishment and Electronic Commerce, provides for commitments on national treatment and market access in a number of sectors and activities registered in the lists of commitments undertaken by the Parties (in Annex VII to the Agreement). A positive listing approach was followed, which means that commitments are undertaken in those sectors or activities included in the Annex. Title IV also applies to measures adopted or maintained by the Parties affecting establishment in any economic activity, with the exception, among others, of mining, manufacturing, and processing of nuclear materials.<sup>21</sup> The Agreement does not provide for investment protection, so it has no provisions on expropriation, fair and equitable treatment or related to investor-state dispute settlement procedures, as such

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<sup>17</sup> Refer to webpage of Ministry of Mines and Hydrocarbons.

<sup>18</sup> <https://www.mef.gob.pe/es/obras-por-impuestos/estadisticas/197-inversion-privada/acuerdos-y-convenios-de-promocion-y-proteccion-rec/343-listado-de-acuerdos-y-convenios-de-promocion-de-inversiones>

<sup>19</sup> Alliance of the Pacific, European Free Trade Association (EFTA), Canada, Chile, China, South Korea, Costa Rica, USA, Honduras, Japan, Panama, and Singapore.

<sup>20</sup> Ministry of Economy and Finance. [https://www.mef.gob.pe/es/?option=com\\_content&language=es-ES&Itemid=100911&view=article&catid=197&id=343&lang=es-ES](https://www.mef.gob.pe/es/?option=com_content&language=es-ES&Itemid=100911&view=article&catid=197&id=343&lang=es-ES)

<sup>21</sup> Other exceptions are: production of or trade in arms, munitions and war material; audio-visual services; national maritime cabotage processing, disposition and waste of toxic waste, and domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights.

provisions are included in the various BITs that Peru has signed with several European states. However, what the Agreement does include in its Article 116 on Investment Promotion and Review is that the progressive liberalization of investments between the EU and Peru should seek to promote an attractive and stable environment for reciprocal investment.

### ***Double taxation treaties (DTT)***

There has been no dynamism in this type of agreements in recent years, even though they can attract FDI. Peru has entered Double Taxation Treaties (DTT) following the OECD model with Canada, Chile, Brazil, Mexico, Portugal, South Korea, Switzerland and Japan, which are currently in force. In addition, in the Andean Community of Nations (CAN in Spanish) Bolivia, Colombia and Ecuador, have adopted decision 578 on double taxation following the United Nations model.

### ***Dispute settlements***

Peru is a member of the MIGA (Multilateral Investment Guarantee Agency) and a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and to the International Centre for the Settlement of Investment Disputes (ICSID convention). Disputes between foreign investors and the state regarding pre-existing contracts must still be dealt with in national courts, unless otherwise provided by international agreements to which Peru is a party. Furthermore, investors who enter into a juridical stability agreement may submit disputes with the government to national or international arbitration if foreseen in the agreement.

### ***Taxation***

Peru is a member of the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and is party to BEPS's October 2021 agreement on the two-pillar solution to global tax challenges, including a global minimum corporate tax. Several countries members to the agreement are implementing the recommendations and the goal is to establish a minimum tax to be charged to corporations with presence in multiple countries.

### ***Competition Law***

Prior to 2021 Peruvian law did not consider ex ante control of acquisitions or mergers. Competition rules only addressed the issue of abuse of dominance and therefore acquisitions that have been an important channel for FDI did not receive any ex ante control. However, in June 2021, Law No. 31112 was enacted and months later its regulation (Supreme Decree 039-2021-PCM), which establishes prior control of corporate concentration operations. This means that according to the new legal framework, and conditioned to specific situations -e.g. if the annual gross sales or revenues or the value of assets in Peru of the companies involved in the operation are above certain thresholds- any FDI case could go through a prior investigation and approval process.

## **Useful links**

**Ministry of Economy and Finance (MEF):**

<https://www.mef.gob.pe/es/>

**Agency for the Promotion of Private Investment – Peru (PROINVERSION):**

<https://www.proinversion.gob.pe/>

**Peruvian Central Reserve Bank (BCRP):**

<http://www.bcrp.gob.pe/>

**National Institute of Statistics and Informatics (INEI):**

<https://www.inei.gob.pe/>

**Economic Commission for Latin America and the Caribbean (ECLAC):**

<https://www.cepal.org/en>

**The experts of the EU MAT Peru project have prepared this infocard.**

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