

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

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**This infocard aims to provide an overview of foreign investment in Peru.**

### General Framework for Foreign Investment

#### Context

Since the early 1990s, Peru has developed a domestic legal framework favourable for foreign investment. Peru has a legal regime that seeks to encourage foreign investment; granting foreign investors the same rights and guarantees afforded to domestic investors and enterprises, as well as ensuring the predictability of the legal regime through legal stability agreements. The Peruvian economy is generally open without impediments to foreign investment. Exceptions to this openness are: i) limitations on foreign investment in some specific sectors and ii) foreign investment within 50 kilometers from Peruvian national borders.

Among the main strengths of Peru's economy are: an abundance of natural resources (mining, energy and agriculture); prudent macroeconomic policies; membership in the Pacific Alliance, which opens access to the markets of Chile, Colombia and Mexico. The main weaknesses of the economy are: high vulnerability linked to fluctuations of commodity prices and the performance of the Chinese economy; high dependence on exports on the primary sector; deficient legal framework; corruption; social conflicts; inadequate infrastructure; vulnerability to natural disasters; and a large informal sector (70% of employment).

It is worth noting that economic growth was driven by private investment, which as of November 2019 represents about **20%** of the GDP<sup>2</sup>. Peru also has one of the lowest inflation rates at the regional level<sup>3</sup>, has maintained a stable exchange rate and a country risk level below the regional average.<sup>4</sup> Lastly, the country has maintained a healthy level of public debt, reducing it from 44.5% of the GDP in 2004 to 25.4% in 2018<sup>5</sup>.

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<sup>1</sup> The information provided in this document is of a general nature only. For more detailed information, events and commercial trade offers as well as commercial business contacts, please contact the Commercial Offices of the Member States and the bilateral Chambers in Lima.

<sup>2</sup> Source : BCRP

<http://www.bcrp.gob.pe/docs/Publicaciones/Notas-Estudios/2019/nota-de-estudios-82-2019.pdf>

<sup>3</sup> Ibid:

<http://www.bcrp.gob.pe/docs/Publicaciones/Reporte-Inflacion/2019/setiembre/reportes-de-inflacion-setiembre-2019-presentacion.pdf>

<sup>4</sup> <https://countryeconomy.com/ratings/peru>

<sup>5</sup> Source : MEF

[https://www.mef.gob.pe/contenidos/deuda\\_publica/documentos/Informe\\_Deuda\\_Publica\\_2018.pdf](https://www.mef.gob.pe/contenidos/deuda_publica/documentos/Informe_Deuda_Publica_2018.pdf)

According to the most recent ranking of the World Bank's "Doing Business" 2019 publication, Peru ranks as number 68 globally (out of 190 countries) and number 5 in the Latin American and Caribbean Region. This is a slight decline from the 58<sup>th</sup> position it assumed in 2018.

Area	Rank
Starting a business	125
Dealing with construction permits	54
Getting electricity	67
Registering property	45
Getting credit	32
Protecting minority investors	51
Paying taxes	120
Trading across borders	110
Enforcing contracts	70
Resolving insolvency	88

Source: <https://www.doingbusiness.org/en/rankings>

In view of **Foreign Direct Investment** ("FDI") stocks, FDI inflows to Peru averaged USD 7,969 million during the 2012 - 2018 period; contributions and other net capital transactions, net loans with parent companies and reinvestments inclusive. However, these figures represent a declining trend compared to the cumulative volume of FDI for the 2007 – 2012 period, which averaged USD 8,101 million<sup>6</sup>. However, **FDI totalled USD 3,094 million during the second quarter of 2019, representing a 108.4% growth compared to the same period in 2018<sup>7</sup>.**

FDI in Peru, 2018		
Sector	USD Millions	Percentage of total FDI%
Mining	5,711.44	22.03
Communications	5,324.16	20.53
Finance	4,695.19	18.11
Energy	3,446.06	13.29
Industry	3,216.42	12.40
Commerce	851.42	3.28
Others	2,685.96	10.36

Source: [INEI](#)

In its more than 20 years of existence, Peru's Agency for the Promotion of Private Investment, **PROINVERSION**, has carried out public tenders that have accounted for more than USD 50 billion in

<sup>6</sup> WTO: Trade Policy Review – Report by the Secretariat; Peru. 2019 – p. 30.

<sup>7</sup> Source : BCRP

<http://www.bcrp.gob.pe/docs/Publicaciones/Notas-Estudios/2019/nota-de-estudios-61-2019.pdf>



investment commitments<sup>8</sup>. To date, PROINVERSIÓN manages 52 projects in its investment portfolio with a combined value of approximately USD 30 billion<sup>9</sup>.

## Main Foreign Investors

In 2018, the EU was **the biggest foreign investor in Peru**, with more than 41% of total FDI stock, followed by Chile with 13% and the USA with 12%. Of the EU members, Spain and the United Kingdom were the main investors, with 18% and 17% of the stock, respectively. Most investments were in the **mining, communications and the financial sectors**.

Main investors by country, Peru 2018	
Country	Percentage of total FDI%
Spain	18
United Kingdom	17
Chile	13
USA	12
Netherlands	6
Brazil	5
Colombia	4
Canada	4
Panama	4
Others	17

Source: [PROINVERSIÓN](#)

## Legal framework for Foreign Investments

Peru has a favourable legal framework for foreign investment thanks to domestic standards and instruments of international scope.

## Main Investor Rights and Limitations

Peru's Political Constitution of 1993 guarantees equality between local and foreign investors. Legislative Decree N° 662 (DL N° 662) establishes that the State promotes and guarantees foreign investments made and those to be made in the country, in all sectors of economic activity, in any of the business or contractual forms permitted by national law.

<sup>8</sup> While PROINVERSIÓN does not currently have an official guide, it recognizes other official guides published by well-known entities e.g. The Report from Oxford Business Magazine:

<https://www.investinperu.pe/modulos/JER/PlantillaStandard.aspx?are=0&prf=0&ier=7164&sec=1>

<sup>9</sup> <https://www.proyectosapp.pe/modulos/JER/PlantillaProyectoEstadoSector.aspx?are=0&prf=2&ier=5351&sec=22>



With regard to the **definition of foreign investment**, DL N° 662 (above) indicates that any investment made from abroad shall be considered as foreign investments, and goes on to list various types of foreign investment such as:

- Cash or non-monetary capital contributions to companies incorporated in Peru.
- Investments in goods located in Peru.
- Intangible technological contributions, such as trademarks, industrial models.
- Patented or non-patented technical assistance and technical knowledge.
- Resources destined for partnership contracts or similar.

Likewise, foreign investment may be registered with [PROINVERSION](#)<sup>10</sup>. In this regard, Article 20 of DL No. 662 conditioned the rights of foreign investors to remit capital and dividends abroad and to convert foreign currency to national currency at the best exchange rate to the registration of foreign investment. However, DL No. 662 was enacted before the 1993 Constitution, which in Article 63 provides that foreign and domestic investments are subject to the same treatment; investment registration is hence not a condition for the exercise of the above rights.

Peruvian law **grants the following rights to foreign investors** :

N°	Rights	Description
01	<b>Equal treatment under the law</b>	The right to receive <b>non-discriminatory treatment</b> in comparison to domestic investors, without the law discriminating between investors or companies on the basis of domestic or foreign ownership of share capital.
02	<b>Private property</b>	The right to private property of foreign investors has no limitations beyond those established by Peru's Political Constitution <sup>11</sup> .
03	<b>Arbitration</b>	The right to resort to arbitration to resolve disputes.
04	<b>Freedom of trade</b>	The right of freedom to trade and industry, and right of freedom to export and import.

<sup>10</sup> <https://www.proinversion.gob.pe/modulos/JER/PlantillaStandard.aspx?are=0&prf=0&ier=5850&sec=1>

<sup>11</sup> See table of limitations to foreign investment below.



N°	Rights	Description
05	Remittances	The right to transfer profits or dividends abroad, in freely convertible currencies, without prior authorization from the Central Government or decentralized governing bodies is guaranteed. The transfer operates upon the payment of the applicable taxes and the goods must be registered with the competent national entity.
06	Exchange rate	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.
07	Re-export of capital	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.
08	Domestic credit	Unrestricted access to domestic credit, under the same conditions as domestic investors.
09	Royalties	The free contracting of technology and remittance of royalties.
10	Acquisition of shares	The freedom to acquire shares owned by domestic investors, including majority shares.
11	Insurance	The ability to contract insurance services based abroad for investments in Peru.
12	Entrepreneurial	The right to freely organize the company.

Although Peru has a legal regime open to foreign investment, there are some activities subject to certain **limitations** as shown in the table below.

N°	Activity	Limitation
01	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.
02	Local commercial aviation	Activity reserved for Peruvian natural and legal persons. <b>51%</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.



N°	Activity	Limitation
03	<b>Broadcasting services</b>	Participation of foreigners may not exceed <b>40%</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.
04	<b>Transport of hydrocarbons by sea</b>	Reserved up to <b>25%</b> for Peruvian Navy vessels, for reasons of national security and defense.
05	<b>Water transport</b>	Until 2018, commercial water transport in 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.

## Legal Stability Agreements

In addition, Peru's Political Constitution gives foreign investors **guarantees** regarding the predictability and continuity of the applicable economic regime, guaranteeing, through **legal stability agreements**, that the rights acquired through a contract cannot be affected by subsequent laws. In this sense, the Constitution has established that, by means of law-contracts, the State guarantees and provides assurances regarding the laws applicable at the time of contracting, which cannot be modified by subsequent laws. The vast majority of legal stability agreements guarantee investors' **non-discrimination rights, stability in the income tax regime** and the free availability of **foreign exchange and remittances**.

**Investment recipients** are guaranteed stability in labour procurement, export promotion regimes and income tax at the time of the agreement's subscription. In terms of the amount of investments, an 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.

## Bilateral Investment Treaties

**Bilateral Investment Treaties** (BITs)<sup>12</sup> are international agreements concluded between two States, aimed at promoting FDI in host countries; 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.

The purpose of BITs is thus to establish guarantees for investors to encourage the international flow of investments. BITs commonly include investor-state **dispute resolution mechanisms** through arbitration. In addition, in various Free Trade Agreements concluded by Peru, investment chapters have

<sup>12</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>



been included<sup>13</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 Belgo-Luxembourg Economic Union.

In addition, Peru is a member of the MIGA (**Multilateral Investment Guarantee Agency**) and has joined the ICSID (International Centre for Settlement of Investment Disputes) Convention. It is also a member of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (**New York Convention**).

## The Peru – EU Trade Agreement and European Investments

The Peru-EU Trade Agreement provides for the liberalization of investment in the form of **market access** through the establishment and granting of national treatment, subject to the commitment established in Schedule VII of the Agreement. Peru has maintained horizontal exemptions for all sectors, such as the right to adopt or maintain any measure based on the rights or preferences of disadvantaged minorities at the economic or social level and ethnic groups. There are no additional restrictions on the national treatment or market access requirements in its agenda for mining and quarrying activities.

Finally, while the Agreement does not cover investment protection, such as those relating to expropriation, fair and equitable treatment, or investor/state dispute settlement procedures; investor protection is covered by the different BITs signed with multiple European States.

## 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/>

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

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

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

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

**Information on Public Procurements in Peru:**

<https://www.tendersinfo.com/global-peru-tenders.php>

<https://www.globaltenders.com/tenders-peru.htm>

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<sup>13</sup> Alliance of the Pacific, European Free Trade Association (EFTA), Canada, Chile, China, South Korea, Costa Rica, USA, Honduras, Japan, Panama, and Singapore.

Information on South American Procurements provided by the Inter-American Development Bank (IDB):

<https://www.iadb.org/en/countries/peru/overview>

Public Procurements at the global level - DgMarket, Tenders Worldwide:

<https://www.dgmarket.com/tenders/>

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