

## Executive Summary

Stimulated by a favourable external environment and the government's commitments to political and economic stability, Peru's economy has recorded since 2002 the fastest growth in South America. Foreign direct investment inflows have started to rise since 2005 and reached a record level of USD 5.4 billion in 2007, an increase of more than 50% compared to 2006. As a result, the country's inward stock surged to USD 24.7 billion in 2007. With 47% of total foreign direct investment, Spain and the United States are the major foreign investors. Among different sectors, telecommunications attracted 28% of total foreign investment, followed by mining (20%), manufacturing (18%) and the financial sector (16%). Since 2006, a number of large Peruvian companies have begun to invest abroad.

Foreign investment has been a critical element in Peru's recent economic development. It has contributed to enhance its export potential and encourage job creation, including in services. Involvement of foreign investors has accelerated expansion of the mining and energy sectors, which represent an important source of tax revenues and generate significant resources for public investment in some regions. Participation of foreign investors in the privatisation process has stimulated competition and modernisation, in particular in telecommunications and banking, leading to noticeable improvements in provision of these services to population. To reap the benefits of investment liberalisation, Peru has to continue to attract further investment in infrastructure, address regional disparities, pursue an active social policy and implement the poverty alleviation strategy.

Peru has established an open and transparent investment regime. The principle of non-discrimination underpins the country's legislation and regulations governing investment, notably the Foreign Investment Promotion Law and the Framework Law on Private Investment Growth. All enterprises have the right to organise and develop their activities under the form they deem appropriate. Peru has taken far-reaching measures to improve regulatory transparency at all levels of government. An enterprise that considers itself threatened or adversely affected by any law or governmental decision can file a lawsuit to the Market Access Commission, part of the National Institute for Defence of Competition and Protection of Intellectual Property (INDECOPI). The Framework Law provides for the possibility of

signing “legal stability agreements” with interested domestic and foreign investors for transactions above a certain size, which guarantee in particular the tax treatment in force at the time of the investment. As Peru’s policy framework has stabilised over the last decade, investors’ interest in these agreements has diminished.

Peru applies a limited number of restrictions on foreign investment which are reflected in the list of exceptions to national treatment (see Annex A). The country maintains a restriction on foreign ownership of land, water and energy resources located within 50 km of its borders, for national security reasons. Peru has agreed not to invoke the national security clause of the National Treatment instrument but to include this restriction in its proposed list of exceptions, thereby placing it within the disciplines of the instrument. This is consistent with the OECD Investment Committee’s approach, which encourages adhering governments to refrain from extensive recourse to the national security clause of the instrument.

Other sectoral exceptions to national treatment concern equity ownership restrictions in broadcasting, air transport and water services. These exceptions, which Peru lodged under the National Treatment instrument of the OECD Declaration, are present in a number of OECD and other adhering countries. Peru agrees that the restrictions become subject to periodic examination by the Organisation after adherence, pursuant to the instrument’s disciplines. Peru’s Constitution includes a principle of reciprocity, but to date it has not been applied to foreign investments. The Government’s presumption is that insofar as countries adhere to the OECD Declaration and its National Treatment instrument, reciprocity conditions will not be applied to them.

The National Treatment instrument covers other measures bearing on foreign investment and requires that they be reported for transparency. Peru has limitations applicable to the foreign and domestic enterprises on employment of foreign personnel in services companies, and requirements to hire Peruvian nationals or residents in key personnel in four specific sectors (see Annex A). Government purchasing of goods and services classified as military secrets are excluded from the general procurement regime. Peru has notified that with the exception of trade in coca, there is no state or private monopoly. The State maintains majority stakes in 31 firms in electricity, banking, securities, real estate, petroleum, ports, water and sewage. Combining existing limited restrictions and these other measures altogether, Peru ranks among the most open economies by the OECD FDI Regulatory Restrictiveness Index.

Peru has made significant progress towards a unified investment regime. Existing tax incentives are applied on a sectoral or territorial basis irrespective of investors’ national or foreign origin. High costs associated with tax exemptions

have prompted the government to streamline the tax incentives regime. A report must be submitted to Congress on any tax exemptions, incentives and other benefits granted to investors by various ministries which will subsist after March 2009, justifying their extension and presenting plans for their eventual elimination. The Legislative Decree which entered into force in March 2008 stipulates that all legislative proposals concerning new tax benefits must explain the objective and scope of the proposed measure, estimated fiscal costs and expected economic benefits. Proposed tax exemptions and incentives should not exceed six years. Investment facilitation and promotion activities are under the responsibility of the Private Investment Promotion Agency (*ProInversión*), which has a leading role in identifying remaining barriers affecting private investment and proposing policy responses to enhance the country's investment environment.

Peru has pursued active international investment diplomacy. It has signed 32 bilateral investment treaties with most of its North and South America's neighbours and a number of European and Asian countries. The treaties are negotiated by a special commission led by *ProInversión*, which has developed guidelines to promote high standards for transparency, investment protection and treatment in Peru's agreements, including provisions for investor-state dispute settlement. The recent Peru-United States Trade Promotion Agreement (TPA) signed in 2006 includes a detailed investment chapter based on these standards. The TPA also enhances the commitments and co-operation of the parties with respect to internationally recognised labour standards and environmental matters. Similar agreements are being negotiated by Peru with other countries. Peru is member of several regional groupings and agreements. It chairs the Asia-Pacific Economic Co-operation (APEC) in 2008 and seeks to promote a closer dialogue between APEC and the OECD on investment, in particular co-operation on the OECD Policy Framework for Investment.

With regard to the OECD Guidelines for Multinational Enterprises, which are an integral part of the OECD Declaration, the Peruvian government has indicated its commitment to take the necessary steps, without delay following adherence, to establish its National Contact Point. Peru is committed to ensuring that its National Contact Point will meet the criteria of visibility, accessibility, transparency and accountability and make the Guidelines better known to business, labour representatives, and other interested parts of Peruvian civil society. Peru's National Contact Point will be located in *ProInversión* and will allow for stakeholder's involvement. The nation has already subscribed to most multilateral instruments underpinning principles and standards embodied in the Guidelines.

The Peruvian authorities have also indicated that they accept the commitments under the other two instruments of the Declaration: the Decision on International Investment Incentives and Disincentives by which

adhering countries recognise the need to give due weight to the interest of other adhering countries affected by laws and practices in this field and endeavour to make measures as transparent as possible; and the Decision on Conflicting Requirements, by which adhering countries shall co-operate so as to avoid or minimise imposition of conflicting requirements on multinational enterprises. Given the rapid pace of policy reforms, Peru will report on new developments to the OECD Investment Committee within one year following its adherence to the Declaration on International Investment and Multinational Enterprises.