

INVESTMENT TREATY ARBITRATION

Peru



Investment Treaty Arbitration

Consulting editors

Epaminontas Triantafilou, Stephen Jagusch KC

Quinn Emanuel

Quick reference guide enabling side-by-side comparison of local insights, including into foreign investment profile and investment agreement legislation; international legal obligations under investment treaties and relevant conventions; foreign investment promotion, domestic laws, regulatory and disputes agencies; investment treaty practice; investment arbitration history; enforcement of awards against the state; and recent trends.

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María Teresa Quiñones
maite.quinones@qalegal.pe
QA Legal



BACKGROUND

Foreign investment

What is the prevailing attitude towards foreign investment?

In December 2022, President Dina Boluarte, the former vice-president, took office after Pedro Castillo's destitution by the Congress. Despite certain initial concerns, President Boluarte's government has proven to be investment-friendly and has continued with the investment promotion policies from prior governments. As an example of the latter, in April 2023, President Boluarte announced that her government will guarantee legal stability for investments in Peru and invited companies to invest in the country.

Since the enactment of the Political Constitution in 1992, Peru has consistently adopted several pro-investment policies. The Peruvian Constitution guarantees foreign investors material rights, such as equal and non-discriminatory treatment, free remittance abroad of capital and profits, access to the most favourable rate of exchange and the right to invest in all economic activities. As a result of these policies, Peru is considered among the top countries in Latin America in terms of favourable investment climate.

Peru has also executed more than 37 bilateral investment treaties, five free trade agreements and 2 double taxation treaties. Most of them guarantee not only fair and equitable treatment to foreign investors, but also the right to submit their controversies to international tribunals, including the International Centre for Settlement of Investment Disputes (ICSID).

Investment disputes have experienced a serious reduction compared with previous years. In the first half of 2023, only one investment dispute was initiated against Peru. In 2022, two investment disputes were launched, and in 2021, nine were launched (see the list of cases [here](#)).

This positive attitude towards private investment is also evidenced in Peru being a signatory to the ICSID convention. It is worth noting that Peru has obtained a favourable outcome in 15 out of 18 ICSID disputes as of March 2021. Of the approximately US\$50 billion demanded from Peru in the finalised cases, only 0.086 per cent of the total claims (approximately US\$43 million) has been recognised in favour of investors' indemnities.

Law stated - 21 June 2023

What are the main sectors for foreign investment in the state?

According to the most recent data from the national private investment promotion agency, ProInversion, as of December 2021, the main sectors attracting foreign investment were mining (24 per cent), finance (20 per cent), communications (19 per cent), energy (12 per cent) and industry (12 per cent), adding up to 87 per cent of the total foreign direct investment in Peru.

Law stated - 21 June 2023

Is there a net inflow or outflow of foreign direct investment?

According to the national private investment promotion agency, ProInversion, 2021 registered a foreign direct investment net inflow amounting to US\$6.201 billion. The projections for 2022 and 2023 were US\$5.14 billion and US\$5.7 billion, respectively.

Law stated - 21 June 2023

Investment agreement legislation

Describe domestic legislation governing investment agreements with the state or state-owned entities.

The Constitution of Peru guarantees equal and non-discriminatory treatment between domestic and foreign investments. To that effect, foreign investors are authorised to invest in any sector of the economy, with no limitations, except for investments located within 50km of Peru's borders. Foreign investors also have the right to freely transfer abroad their capital, dividends and profits, as well as to use the most favourable exchange rates.

The Peruvian Constitution also entitles the government to execute 'legal stability agreements' with investors. These grant investors, for a 10-year period, the following rights: income tax stability; equal treatment with domestic investors; free remittance abroad of capital, dividends and profits, without the need of prior authorisation by any Peruvian authority; and freedom to use the most convenient exchange currency. In addition, provided certain requirements are met, the vehicle company where the investment is made has a right to execute a legal stability agreement, guaranteeing the applicable labour recruitment and export regime. In the case of investments made in public infrastructure through public-private partnerships (PPPs), the term of the stability agreements may be extended to the whole concession term. Legal stability agreements have a 'contract law' status, which means that they may not be unilaterally modified nor terminated by the government, not even by a law approved by the Congress.

According to Law No. 27342, investors committing a minimum of US\$10 million (for investments in the mining, oil and gas sectors) or US\$5 million (for investments in other economic sectors) are eligible for executing legal stability agreements.

In addition, several laws have been enacted (in particular, Law No. 30056) aimed at facilitating investment, by means of removing bureaucratic barriers, promoting the simplification of the early recovery special sales tax regime and the simplification of municipal authorisations.

Regarding investments in the main economic sectors (eg, mining, power generation, telecommunications, natural gas transport and distribution), these are made under concession contracts or PPP contracts regulated by Legislative Decree 1362. On the other hand, investments in the hydrocarbons sector are made under licence contracts entered into with Perupetro SA, a state-owned company.

It is worth mentioning that both public works contracts with state entities and PPP contracts (including concessions) for the construction and operation of public infrastructure and utilities include arbitration clauses. It is also customary that, if the amount in dispute exceeds a certain threshold (usually, US\$30 million) the arbitration clause provides for ICSID arbitration.

Law stated - 21 June 2023

INTERNATIONAL LEGAL OBLIGATIONS

Investment treaties

Identify and give brief details of the bilateral or multilateral investment treaties to which the state is a party, also indicating whether they are in force.

Peru is a signatory to 37 bilateral investment treaties (including 12 free trade agreements with investment protection provisions) currently in force with the following countries (the texts of the treaties may be found [here](#)):

- Argentina;
- Australia;

- Belgium and Luxembourg;
- Canada;
- Chile;
- China;
- Colombia;
- Costa Rica;
- Cuba;
- Czech Republic;
- Denmark;
- El Salvador;
- European Free Trade Association (EFTA) states;
- European Union;
- Finland;
- France;
- Germany;
- Honduras;
- Italy;
- Japan;
- Malaysia;
- Mexico;
- Netherlands;
- Norway;
- Panama;
- Paraguay;
- Portugal;
- Romania;
- Singapore;
- South Korea;
- Spain;
- Sweden;
- Switzerland;
- Thailand;
- United Kingdom;
- United States; and
- Venezuela.

Peru is also a signatory to two multilateral investment treaties, which are currently in force:

- the Pacific Alliance Additional Protocol, Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP); and
- the Pacific Alliance Free Trade Agreement.

Similarly, on 26 January 2022, in concert with Chile, Mexico, Colombia and Singapore, Peru executed the Pacific Alliance-Singapore FTA (2022). This agreement, however, has not yet entered into force.

Law stated - 21 June 2023

If applicable, indicate whether the bilateral or multilateral investment treaties to which the state is a party extend to overseas territories.

Not applicable.

Law stated - 21 June 2023

Has the state amended or entered into additional protocols affecting bilateral or multilateral investment treaties to which it is a party?

The Bolivia–Peru bilateral investment treaty (BIT) was amended in 2017 to state that if the parties do not agree to extend its term, it will remain in force for an additional 15-year period, only for investments made before 19 February 2018.

It is worth mentioning that the provisions of the Japan–Peru BIT remain in force because this treaty has been absorbed by the Economic Partnership Agreement between Peru and Japan, which has been in force since 1 March 2012.

Law stated - 21 June 2023

Has the state unilaterally terminated any bilateral or multilateral investment treaty to which it is a party?

Peru has not unilaterally terminated any bilateral or multilateral investment treaty to which it is a party.

Law stated - 21 June 2023

Has the state entered into multiple bilateral or multilateral investment treaties with overlapping membership?

A number of countries with which Peru has executed BITs or free trade agreements (FTAs) are also parties to multilateral treaties with investment provisions signed by Peru. Such is the case for Australia, Chile, Canada, Japan and Malaysia, which are all parties to the CPTPP.

The same situation arises with the countries that have executed the Pacific Alliance, such as Peru, Colombia, Chile, Ecuador and Panama, which are also parties to the Pacific Alliance FTA.

These multilateral treaties continue to operate in parallel with the BITs or FTAs above mentioned.

Law stated - 21 June 2023

ICSID Convention

Is the state party to the ICSID Convention?

Yes, Peru has been a party to the International Centre for Settlement of Investment Disputes (ICSID) Convention since 1993. Peru executed the ICSID Convention in September 1991 and ratified it in August 1993.

Law stated - 21 June 2023

Mauritius Convention

Is the state a party to the UN Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention)?

No, Peru is not a party to the UN Convention on Transparency in Treaty-based Investor-State Arbitration.

Law stated - 21 June 2023

Investment treaty programme

Does the state have an investment treaty programme?

No, the Peruvian state does not have an investment treaty programme.

Law stated - 21 June 2023

REGULATION OF INBOUND FOREIGN INVESTMENT

Government investment promotion programmes

Does the state have a foreign investment promotion programme?

Since 1990, Peru has approved a constitutional and legal framework promoting foreign direct investment.

The 1993 Constitution guarantees:

- non-discriminatory rights to foreign investors;
- the right to transfer abroad investors' capital, after-tax dividends and royalties;
- the right to freely possess, dispose of and exchange foreign currency;
- the right to a free and fair competition market;
- the right to invest in any economic sector;
- property rights – no individual, including foreign investors, may be deprived of their property unless it is for reasons of national security or public necessity declared by law, and with the condition of prior payment in full of the property value and damages incurred;
- the only restriction applicable to foreigners is in connection to property and businesses within 50km of all national borders. However, this restriction may be waived by supreme decree, if declared as a case of public necessity; and
- the right to submit their controversies to national or international arbitration.

Legislative Decrees No. 662 and 757 are laws specifically enacted to attract investment, detailing the rights and guarantees that foreign and domestic investors enjoy. Among other rights, these laws guarantee equal treatment to foreign and national investors, the right to transfer abroad their capital and profits and to invest in any sector without requiring governmental approval. They also grant investors the right – provided certain investment requirements are met – to execute a legal stability agreement with the government, which grants investors, for a 10-year period, the following rights: income tax stability; equal treatment with domestic investors; free remittance abroad of capital, dividends and profits, without the need of prior authorisation by any Peruvian authority; and freedom to use the most convenient exchange currency. In addition, provided certain requirements are met, the vehicle company where the investment is made has a right to execute a legal stability agreement, guaranteeing the applicable labour recruitment

and export regime. In the case of investments made in public infrastructure through public-private partnerships (PPPs), the term of the stability agreements may be extended to the whole concession term. Legal stability agreements have a contract law status, which means that they may not be unilaterally modified nor terminated by the Government; not even by a law approved by the Congress.

ProInversion is the national private investment promotion agency. For the past 21 years, ProInversion has actively promoted investment in public utilities and public infrastructure projects (roads, natural gas pipelines, airports, water treatment plants, telecommunications, hospitals, electricity transmission lines, etc), designing public tendering processes for the awarding of PPP contracts.

The ProInversion website provides information regarding the investment climate in the country, available projects and projects that the state is planning to award through PPPs, among others. It also provides access to the Foreign Investors Registry.

In 2019, Peru approved the National Infrastructure Plan for Competitiveness (PNIC), which prioritises 52 projects, representing a US\$30 billion investment. Around 60 per cent of these projects will be executed through PPPs.

In 2022, Peru complemented the PNIC and approved the National Sustainable Infrastructure Plan for Competitiveness (PNISC). The PNISC incorporates improvements in the state's planning of national infrastructure, aimed at promoting productivity and creating opportunities through the provision of adequate, sustainable and equitable public goods and services. It prioritises 72 projects, totalling a US\$40 billion investment, mainly in the following sectors: transportation, technology, media and telecom, sanitation, electricity, hydrocarbons, environment, production, agriculture and irrigation, education and health.

Also in 2022, the Foreign Affairs Ministry approved Peru's Business and Investment Guide , which is a tool that provides key information to foreign and national investors.

Law stated - 21 June 2023

Applicable domestic laws

Identify the domestic laws that apply to foreign investors and foreign investment, including any requirements of admission or registration of investments.

The domestic laws applicable to foreign investors and foreign investment include the following main rules:

- the 1993 Peruvian Political Constitution;
- Legislative Decree No. 662, which approves the Legal Stability Regime for Foreign Investment;
- Legislative Decree No. 757, which approves the Framework Law for the Growth of Private Investment;
- Law No. 27342, which regulates the legal stability agreements under Legislative Decrees No. 662 and 757;
- Law No. 30056, which amends various laws to facilitate investment, boost productive development and business growth; and
- Supreme Decree No. 162-92-EF, which approves the Regulations of the Private Investment Guarantee Regimes.

These regulations consider an 'investment' to be any form of foreign investment that contributes to the development of the country, including:

- property contributions (cash, physical or tangible goods) of foreign natural or legal persons, channelled through the national financial system to the capital of a new or existing company;
- investments in national currency that derive from resources entitled to be remitted abroad;
- reinvestments made in accordance with national legislation;

- investments in goods located within the territory of Peru;
- intangible technological contributions (such as trademarks, industrial models, technical assistance, etc);
- investments for the acquisition of securities, documents and financial papers listed on stock exchanges or bank deposit certificates in national or foreign currency; and
- resources destined for joint ventures or similar association contracts that grant the foreign investor a form of participation in the production capacity of a company.

Foreign investments do not require previous authorisation by reason of their foreign origin, except those investments in maritime and air transportation, those involving weapons or explosives and those located within 50km of Peru's frontier line or in natural protected areas.

Foreign investors may enter into Legal Stability Agreements with Peru, represented by ProInversion, if they maintain the investment for at least two years. The investment must amount to a minimum of US\$10 million in the mining or hydrocarbons sectors, or US\$5 million in any other economic sector. In the case of concession contracts, the minimum amount is the required project investment.

According to Peru's Business and Investment Guide 2022 , to access the benefits of a legal stability agreement, the foreign investment must be registered with ProInversion, the agency for the promotion of investment. The registration is regulated by Legislative Decree No. 662 and Supreme Decree No. 162-92-EF.

Law stated - 21 June 2023

Relevant regulatory agency

Identify the state agency that regulates and promotes inbound foreign investment.

The state agency in charge of promoting foreign investment is ProInversion.

ProInversion promotes private investment through public-private partnerships (PPPs), projects with assets transferred by the state and works in exchange for tax reductions. These projects develop public services and public infrastructure.

For the past 21 years, ProInversion has actively promoted investment in roads, natural gas pipelines and distribution networks, airports, water treatment plants, telecommunications and broadband infrastructure and hospitals. It structures the projects and organises public bidding processes to award the corresponding contracts. As the ministries for each sector delegate the structuring of their prioritised projects to the agency, the relevance of ProInversion depends on the government's support for promoting private investment through PPP agreements.

Furthermore, it is important to mention that the ministries, regional governments and municipalities may also award investment contracts in their respective sectors or jurisdictions.

Law stated - 21 June 2023

Relevant dispute agency

Identify the state agency that must be served with process in a dispute with a foreign investor.

Usually, treaties assert that the division of international economy, competition and private investment affairs of economy and finance must be served with process.

Additionally, any time a dispute based on an investment treaty arises, the System of Coordination and Response of the State in International Investment Disputes (SICRECI), which also belongs to the Ministry of Economy and Finance, must be alerted by the state entity served with process. The SICRECI oversees assisting the state entity involved in the

dispute in negotiating with the investor during the cooling-off period, in hiring lawyers to represent Peru and in designing the legal defence for the case.

Law stated - 21 June 2023

INVESTMENT TREATY PRACTICE

Model BIT

Does the state have a model BIT?

Yes, the state has a model bilateral investment treaty (BIT)

The Peruvian BIT model guarantees various investors' rights. It contains diverse provisions such as the fair and equitable treatment of investors and the preclusion of discriminatory treatment between national and foreign investors and foreign investors of different nationalities.

It also guarantees that investors can freely transfer abroad investors' capital, after-tax dividends and royalties in their preferred currency. Similarly, it states that an investment shall not be expropriated, nationalised or subjected to measures with equivalent effects except for reasons of national security or public necessity, on a non-discriminatory basis and under due legal process.

Finally, this BIT model has an International Centre for Settlement of Investment Disputes (ICSID) arbitration clause for investors to be able to have an independent jurisdiction to make their investment-related claims, if necessary.

Law stated - 21 June 2023

Preparatory materials

Does the state have a central repository of treaty preparatory materials? Are such materials publicly available?

No, the state does not have a central repository of publicly available treaty-preparatory materials, but the background of some treaties may be found on the official website of the Ministry of Foreign Affairs of Peru.

Law stated - 21 June 2023

Scope and coverage

What is the typical scope of coverage of investment treaties?

The scope of coverage varies in each treaty. However, the BITs entered into by Peru typically extend its protections to investors defined as:

- natural persons who, according to the legislation of that contracting party, are considered to be nationals of that contracting party; and
- legal entities, including partnerships, corporations, business associations or any other entity incorporated or otherwise duly organised under the laws of the contracting party.

In addition, each treaty has specific language to expressly include or exclude certain natural persons or legal entities within the term 'investor'. For example:

- the Argentina–Peru BIT, the France–Peru BIT and the Portugal–Peru BIT require legal entities to have their seat or corporate headquarters in the contracting party territory;
- the Argentina–Peru BIT also includes legal entities organised in any country that are ‘effectively controlled’ by natural persons or legal entities of the other contracting party;
- the Spain–Peru BIT requires that the legal entity is ‘effectively controlled’ in the territory of the contracting party;
- the France–Peru BIT includes legal entities that are controlled, directly or indirectly, by nationals of one of the contracting parties or by legal entities that have their seat or corporate headquarters in the contracting party;
- the Netherlands–Peru BIT includes legal entities, localised anywhere, directly or indirectly controlled by nationals of the contracting party. The Belgium–Peru BIT has a similar provision;
- the Peru–Sweden BIT includes legal entities organised under the laws of third countries in which a national has a ‘predominant interest’;
- the Colombia–Peru BIT, Canada–Peru free trade agreement (FTA), Chile–Peru FTA and Costa Rica–Peru FTA expressly include state-owned corporations. These treaties, as well as the Singapore–Peru FTA, state that in cases of double nationality, a natural person will be considered a national of the state of their ‘dominant and effective nationality’;
- the China–Peru FTA expressly includes within the definition of investor for China economic entities established in accordance with Chinese laws and domiciled in the territory of China;
- the Malaysia–Peru BIT and the Singapore–Peru FTA include permanent residents within the definition of investor;
- the Czech Republic–Peru BIT requires legal entities to have a permanent residence in the contracting party;
- the United Kingdom–Peru BIT includes companies organised in other territories for which international relations the United Kingdom is responsible;
- the Switzerland–Peru BIT requires legal entities organised under the laws of the contracting party to have ‘real economic activities’ in the contracting party territory. The Romania–Peru BIT only requires legal entities to have ‘economic activities’; and
- certain BITs (Peru–Japan, Peru–Colombia) and FTAs (Australia, Canada and Costa Rica) include, within the definition of investor, more precise language regarding the timing of the investment, including a national or an enterprise of a party that attempts to make or is making an investment in the territory of the other party. The Peru–Costa Rica, Peru–Japan, Peru–Panama, Peru–Mexico and Peru–Korea FTAs are even more specific and establish that an investor attempts to make an investment when they take concrete actions, understood as taking the essential and necessary actions to make the investment such as funding and obtaining permits and licences, among others.

With respect to the investments covered by the treaties’ protection, all treaties use broad language that includes any type of tangible or intangible assets invested according to the laws of the contracting party and contains the usual non-exhaustive list of assets. Additionally, certain treaties have specific language to include or exclude certain types of investments. For example:

- many BITs and FTAs expressly include assets that an investor owns or controls, directly or indirectly. Others are silent regarding indirect control of an asset;
- the France–Peru BIT expressly mentions indirectly held shares as protected investments;
- the Denmark–Peru BIT includes assets connected with economic activities acquired for the purpose of establishing lasting economic relations;
- the Italy–Peru BIT includes in the list of assets the increases in the original investment value;
- most FTAs with Peru refer to investments as assets that have the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit or the assumption of risk;

- the Australia–Peru and the Peru–Panama FTAs establish that whether a particular type of licence, authorisation, permit or similar instrument (including a concession to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the party’s law;
- the Canada–Peru FTA excludes claims to money that solely arise from commercial contracts for the sale of goods and services and the extension of credits in connection to commercial transactions. The Peru–Costa Rica FTA, Peru–Colombia FTA, Peru–Panama FTA and Peru–Mexico FTA have similar exclusions;
- the Peru–Singapore FTA excludes bonds, debentures and loans and other debt instruments that are of a personal nature, unrelated to any business activity;
- the Peru–Chile FTA, Peru–Colombia FTA, Peru–Australia FTA and Peru–Panama FTA exclude orders or judgments entered in a judicial or administrative action; and
- the Peru–Colombia FTA and Peru–Panama FTA exclude loans from one party to the other, public debt operations and debt of public institutions.

Law stated - 21 June 2023

Protections

What substantive protections are typically available?

Most BITs and FTAs entered into by Peru currently in force provide for the following substantive protections:

- fair and equitable treatment;
- full protection and security;
- most favourable treatment or most favoured nation;
- no expropriation or nationalisation unless requirements are met, including measures equivalent to expropriation;
- free transfer of payments derived from an investment; and
- subrogation.

Law stated - 21 June 2023

Dispute resolution

What are the most commonly used dispute resolution options for investment disputes between foreign investors and your state?

The most used dispute resolution option for investment disputes between foreign investors and Peru is the International Centre for Settlement of Investment Disputes (ICSID).

Law stated - 21 June 2023

Confidentiality

Does the state have an established practice of requiring confidentiality in investment arbitration?

Usually, pleadings, awards and hearings are confidential except when the treaty, contract or parties’ agreement provides for public hearings and pleadings. Awards are made publicly available.

Law stated - 21 June 2023

Insurance

Does the state have an investment insurance agency or programme?

Peru does not have a state investment insurance agency or programme.

Law stated - 21 June 2023

INVESTMENT ARBITRATION HISTORY

Number of arbitrations

How many known investment treaty arbitrations has the state been involved in?

Peru has been involved in 42 investment arbitration cases at the International Centre for Settlement of Investment Disputes (ICSID).

Also, there are three investment arbitrations registered at the Permanent Court of Arbitration currently pending.

Peru has been successful in most investment arbitrations. Only four awards have ordered Peru to make payments in favour of an investor:

- ICSID Case No. ARB/14/2 Bear Creek Mining Corporation v Republic of Peru, where Peru was ordered to pay US \$18 million out of a US\$522 million claim;
- ICSID Case No. ARB/03/28 Duke Energy International Peru Investments No. 1 Ltd v Republic of Peru, where the Tribunal ordered a payment of US\$18 million out of a US\$522 million claim;
- ICSID Case No. ARB/07/6 Tza Yap Shum v Republic of Peru, where the Tribunal ordered a payment of US \$786,306.24; and
- ICSID Case No. UNCT/18/2 Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v Republic of Peru, where the Tribunal ordered a payment of US\$33,222,630, plus interest at a rate of 7.22 per cent per annum, with accrual starting on 1 January 2009, compounded annually and continuing until the date of full payment, plus some arbitration costs.

Law stated - 21 June 2023

Industries and sectors

Do the investment arbitrations involving the state usually concern specific industries or investment sectors?

Yes, most of the investment cases involving Peru relate to the oil, gas, mining, transportation and electricity sectors.

Law stated - 21 June 2023

Selecting arbitrator

Does the state have a history of using default mechanisms for appointment of arbitral tribunals or does the state have a history of appointing specific arbitrators?

The state typically plays a very active role in the appointment of the tribunal. In fact, Peru has always appointed its arbitrators, without resorting to default mechanisms.

Peru has no history of appointing specific arbitrators, regardless of having appointed some arbitrators more than once.

Law stated - 21 June 2023

Defence

Does the state typically defend itself against investment claims? Give details of the state's internal counsel for investment disputes.

Peru generally hires a local counsel and an international law firm with an international arbitration practice to represent it.

The State System for Coordination and Response to International Investment Disputes , through its Special Commission, has the legal authority to assist in the hiring of counsel and to supervise the work of those lawyers.

Law stated - 21 June 2023

ENFORCEMENT OF AWARDS AGAINST THE STATE

Enforcement agreements

Is the state party to any international agreements regarding enforcement, such as the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards?

Peru became a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) on 7 July 1988. Peru has not made any reservations.

Law stated - 21 June 2023

Award compliance

Does the state usually comply voluntarily with investment treaty awards rendered against it?

Yes, see [here](#) for further information.

Law stated - 21 June 2023

Unfavourable awards

If not, does the state appeal to its domestic courts or the courts where the arbitration was seated against unfavourable awards?

No. Since most of the arbitrations are International Centre for Settlement of Investment Disputes (ICSID) cases, there is no recourse to any court.

Law stated - 21 June 2023

Provisions hindering enforcement

Give details of any domestic legal provisions that may hinder the enforcement of awards against the state within its territory.

In non-ICSID cases, awards require recognition prior to domestic enforcement. Peru is a signatory to the New York Convention. Consequently, article 76 of Legislative Decree No. 1071 only requires the submission of the foreign award. The competent Superior Court examines whether the formal requirements are met and may only deny recognition of a foreign award on the specific grounds contained in article 75 of Legislative Decree No. 1071:

- if one of the parties to the arbitration agreement was affected by some incapacity, or that such agreement is invalid, under the law to which the parties have submitted it, or if nothing had been indicated in this regard, under the law of the country where the award was rendered;
- if the party against whom the award is invoked has not been duly notified of the appointment of an arbitrator or of the arbitral proceedings, or has not been able, for any other reason, to assert its rights;
- if the award refers to a dispute not provided for in the arbitration agreement or contains decisions that exceed its terms;
- if the composition of the arbitral tribunal or the arbitral proceedings have not been in accordance with the agreement entered into between the parties, or in the absence of such agreement, they have not been in accordance with the law of the country where the arbitration took place;
- if the award is not yet binding on the parties or has been annulled or suspended by a competent judicial authority of the country in or under the law of which the award was rendered;
- if under Peruvian law, the subject matter of the dispute cannot be arbitrable; and
- if the award is contrary to international public policy.

Peruvian courts are not entitled to review an arbitral award on the merits.

Law stated - 21 June 2023

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in your jurisdiction?

No updates at this time.

Law stated - 21 June 2023

Jurisdictions

	Bangladesh	Vertex International Consulting
	Belgium	Linklaters LLP
	Canada	Wasel & Wasel
	China	Zhong Lun Law Firm
	Egypt	Shahid Law Firm
	European Union	Van Bael & Bellis
	France	Laborde Law
	Italy	MGC Arbitration
	Japan	Anderson Mōri & Tomotsune
	Kazakhstan	GRATA International
	Malaysia	Cecil Abraham & Partners
	Pakistan	RIAA Barker Gillette
	Peru	QA Legal
	Romania	STOICA & Asociații
	Russia	BGP Litigation
	Spain	DLA Piper
	Switzerland	Schellenberg Wittmer
	United Kingdom	Quinn Emanuel
	USA	Quinn Emanuel
	Uzbekistan	Putilin Dispute Management
	Vietnam	LNT & Partners