



**Asia-Pacific
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Evolution of International Investment Agreements - Peru

Submitted by: Peru



**Capacity Building on Existing International
Investment Agreements in the APEC Region,
Relevance, Emerging Trends, Challenges and
Policy Options to Address Coherence in Treaty
Making**

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REPUBLICA DEL PERU



EVOLUTION OF INTERNATIONAL INVESTMENT AGREEMENTS - PERU

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Invest in peru **ProInversión**
Private Investment Promotion Agency - Peru

Peruvian Investment Agreements Network

Investment Agreements

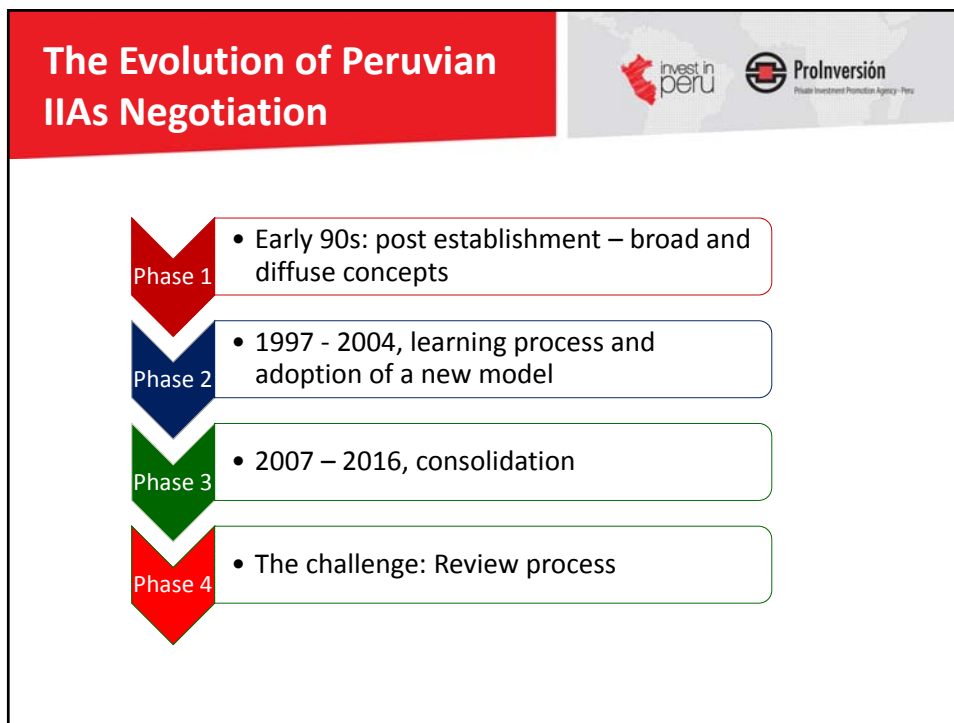
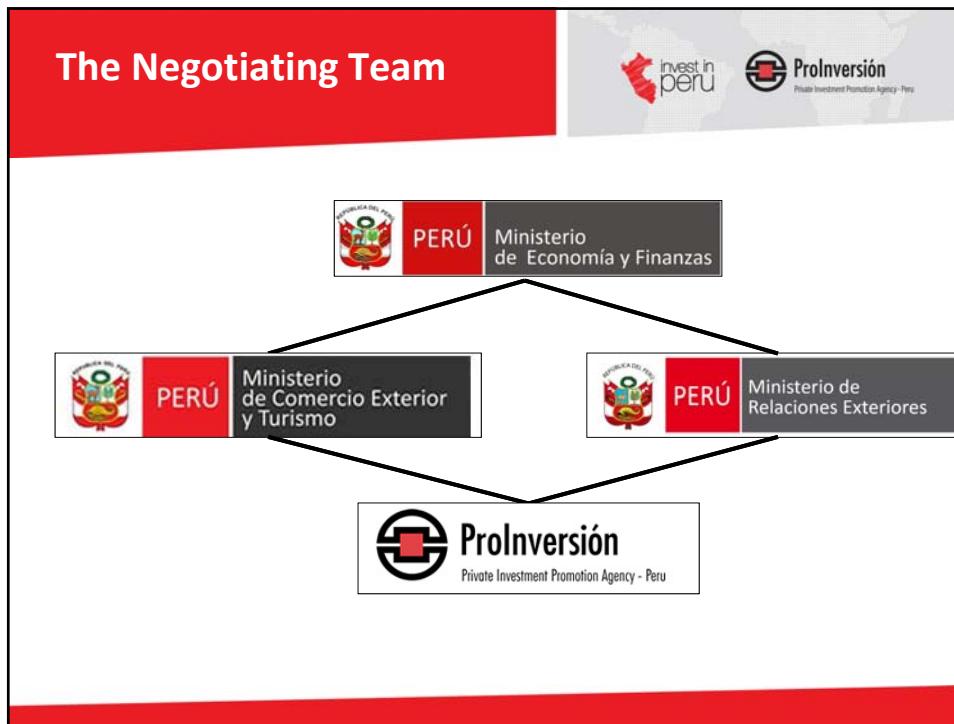
- Peru has signed and in force more than 35 International Investment Agreements (Bilateral Investment Treaties and Free Trade Agreements including Investment Chapters).



plus the TPP!

- Australia
- China
- Korea
- Malaysia
- Singapore
- Thailand
- Japan
- Canada
- United States¹
- Mexico
- Cuba
- El Salvador
- Costa Rica
- Panamá
- Argentina
- Bolivia
- Chile
- Colombia
- Ecuador
- Paraguay
- Venezuela
- European Union
- European Association of free Trade (Iceland, Liechtenstein, Switzerland and Norway)

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Phase 1: 1990s



- Not real conscious regarding the commitments that the State undertake with these agreements
- Post Establishment structure / Protection of Investment Agreement
- Tendency South – North IIAs (most with European countries)
- Few and broad definitions / Poor regulation regarding scope and coverage – no reference to measures
- Main articles included: TN, TNMF, FET, No expropriation, Transfers, Subrogation, Treatment in case of Strife and dispute settlement mechanisms
- Provides standards of fair and equitable treatment and full protection and security to investors, treated independently
- Guarantee of free transfers without exceptions
- Inclusion of regulations that may be interpreted as “umbrella clauses”
- General article regarding Investor-State dispute settlement mechanism

Phase 2: New Model



Definition of Investment:

- Asset based and wide definition. It indicate the elements which do not constitute investment

Level of government:

- Every level of government (central, regional and local) bears obligations under the agreement


Pre and Post Establishment

- Protection and Liberalization agreement - applicable to every phase of the investment cycle

Negative List Approach

- open market including annexes of reservations and non conforming measures

Phase 2: New Model



National Treatment:

- “in like circumstances”

Most Favored Nation Treatment:


- “in like circumstances” / does not encompass mechanisms for the settlement of investment disputes (Maffezini Clause)

Minimum standard of Treatment

- Is accorded to investments in the host country in accordance with customary international law, including fair and equitable treatment and full protection and security

Prohibition of Performance Requirement

Phase 2: New Model



Prohibition of direct and indirect Expropriation

- Except for the grounds established in the Peruvian Constitution. Includes explanatory annex on indirect expropriation / compensation / exception of non discriminatory measures that protects legitimate public welfare objectives.

Guarantee of free transfer of funds

- Include the possibility of the government to apply non discriminatory safeguard measures to protect the security and integrity of the financial system.

Compensation for Losses or Damages related to their investment in the host country

Phase 2: New Model



Dispute Settlement Mechanism (State vs. State and State vs. Investor)

- More comprehensive regulation, including: (i) procedure requirements to submit a claim to arbitration; (ii) fork on the road; (iii) applicable rules; (iv) main rules within the arbitral process; (v) enforcement of the award rendered; (vi) assumption of expenses by the disputing parties.

Environmental Measures

- not to relax these measures to encourage investment

Phase 3: Consolidation



- Improve wording of the IIA and include clarifications of concepts
- Include a Corporate Social Responsibility article to encourage enterprises operating within its territory to incorporate into their internal policies those internationally recognized standards, guidelines and principles of CSR endorsed by the Party
- Improve article regarding environmental measures, including health, safety and other regulatory objectives
- Include the creation of a Committee on Investment to consult on issues related to the agreement

Phase 3: Current tendencies



- Negotiations of regional and multilateral agreements
Negotiation of IIA within the context of commercial agreements
- Continue the improvement of wording in articles
- Try to replace old treaties by new negotiations
- Prevent international investment disputes: wording of the agreements and internally also by the State Coordination and Response System for International Investment Disputes - Law No. 28933, which include a Special Commission in charge of coordinating the Peruvian defense in international investment arbitration.

Different IIA negotiated by Peru



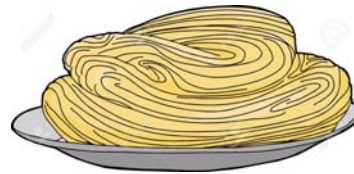
- European Union (FTA)
- EFTA (FTA)
- Pacific Alliance Protocol
- China (FTA)
- Singapur (FTA)
- Post establishment 1990 Bits
- Transpacific Partnership Alliance
- Unites States (TPA)
- Canada (FTA and BIT)
- Japan BIT
- ... etc...



Phase 4: How to deal with the Peruvian Spaghetti Bowl?



- GATs treaty model / NAFTA model / ¿Brazil model?
- Protection /protection and liberalization
- Positive list /negative list approach
- South–North and South-South IIA
- Post establishment old BITs / pre establishment new comprehensive BITs
- Transitional clauses between old and new BITs (coexistence /suspension /termination)
- Regional / Multilateral and Bilateral IIA
- BITs with regulation only for investment in good and not services



Thank You