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## **MAPPING OUT ASIAN REAL ESTATE INVESTMENT IN LATIN AMERICA**

### **THE CASE OF PERU**

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#### **I. INTRODUCTION**

This study is the result of our initial investigation of Asian investment in the real estate sector in Peru. While much has been discussed about the growing Asian influence, especially the People's Republic of China, on the economies of Latin American countries, little has been studied about the influence of this investment on the real estate or real estate sector Latin American countries.

The purpose of this research is to provide initial information and criteria to assess and measure Asian investment in the real estate sector of these countries, understanding that the acquisition of strategic property rights over real estate assets is potentially a way to control not only important economic sectors but also have political and geostrategic implications that endanger the national sovereignty of these countries.

To this end, we adopt a broad definition of real estate rights which includes not only those rights derived from buying and renting a property, but includes direct or indirect control and use rights (interests) in real property – the land, its surface, the air space above, the minerals below and the adjacent properties – for a given period of time, as presented in the methodological framework of this research.

Defining real estate rights broadly allows us to see how today in Peru, Asian companies directly and indirectly control land, via construction and concession contracts granting them broad rights to exclusively build, control and operate large infrastructure projects, such as mining investments, railway operation and related laying of telecom cable, power transmission lines and other investments. These extensive coordinated Asian investments in practice are a deliberate strategy

to acquire, aggregate and amass property rights over a wide variety of real estate assets in Peru (and other Latin American countries) that could be the tipping point to dangerous Asian control of part of the territory and the economy in these countries.

The increasing investment of Asian companies, mainly from the Peoples Republic of China (China) and its concomitant allows it to significant control economies and most likely politics in countries such as Peru. Latin American countries are vulnerable to the huge power of Asian companies investing in their countries because of the institutional weakness that affect most Latin American nations combined with their urgent need to for financial investments to close their huge infrastructure gaps and extract their natural resources to create wealth and attend their people's needs.

This work has been made possible by Federal Funding granted from the United States of America administered through the Center for International Business Education and Research (CIBER) of Florida International University. The research was conceived and led by Professor Suzanne Hollander, a real estate lawyer and broker who teaches real estate law, property rights, commercial leasing and development at FIU for 10 years, in its undergraduate and postgraduate programs and has taught property law and given courses in Spanish to business people and at universities in Lima, Colombia and Mexico. In addition to her professional and academic record, the United States Department of State appointed Dr. Hollander to its Fulbright Specialist Roster as an Expert in Real Estate and she is a graduate of Dartmouth College and the University of Miami School of Law.

As this is an initial exploratory research, the work plan included a field visit to the city of Lima, Peru's capital, from July 15 to 29, 2019 in order to conduct a series of in-depth interviews with real estate experts, real estate investors, multinational and national law firms representing Asian companies, Peruvian government officials, Asian business associations and financial institutions and diplomats of various embassies to support the research.

Many of the actual infrastructure investments are located throughout the country. This first visit was to Lima, not to each individual infrastructure project, because Peru is a country with centralized power and most of the government organizations and large multinational companies that invest throughout the country maintain their corporate offices in Peru. A future extension of this project could include field visits to important Asian infrastructure projects outside of Lima.

The coordination of the fieldwork and the agenda of the interviews was led by a team of professionals of the company *Sánchez & Silva Consultores LLC*, specifically lawyer Jacqueline Silva Hurtado, a graduate of the University of Lima and specializing in the real estate field with over 20 years of experience working in Latin American, African and Asian countries on real estate property rights issues and Pamela Sánchez Zambrano, a professional in the field of business administration with extensive experience of working in the design and implementation of real estate projects. Both supported the coordination of the interview agenda, the collection and processing of the necessary information from books, documents and the internet.

Finally, this work presents a series of conclusions, findings and recommendations based mainly on the perception we (the team of Dr. Hollander, Dr. Silva and Ms. Sanchez) developed regarding the status of today's situation of Asian investment in Peru, where companies directly or indirectly related to government of the People's Republic of China account for the vast majority of investment on this continent, and how it may impact the short and long term future of the economy of Peru and the geopolitical balance of the world.

The first significant lesson learned from our research is that the coordinated process of long-term penetration of Chinese investment, the acquisition, aggregation and amassing of property rights has only just begun. Today, more than 180 Chinese companies exist in Peru <sup>(1)</sup> and are already leading investment in strategic sectors such as large infrastructure, including transportation of people, minerals and materials, real estate rights, public road concession rights as part of their operations expand, thus being able to increase their interest and the control they have over Peru's sovereign territory, economy and politics, while large U.S. companies sit by the wayside and are passing on the opportunity to create a stronghold or even establish a presence in Peru.

## **II. SECTION ONE: METHODOLOGICAL FRAMEWORK**

In this section we present the vision and concepts approaches of our research, as well as methodology exhaustion in the development of thesis.

### **2.1 Vision:**

There is a traditional vision of what the "Real Estate Industry" includes, i.e. the sector that relates to the design, development, construction and marketing of land for monetary fees or in exchange for currency (even in Peru, most property is sold in denominations of U.S. dollars) for residential housing, commercial industry, agriculture, trade as well as the technical, legal and financial services that are referred to by individuals and companies to acquire useful rights or guarantees to finance are distinct from projects.

Because of the nature of this initial exploratory work, we could not simply adopt a traditional conception of what is called the real estate sector. In the real world, global investors strategically acquire rights over property (real or personal) that may be more profitable, flexible and liquid than traditional ownership.

Today, the Real Estate sector extends far beyond the property rights and possession of the physical property (land and improvement) new and innovative ways to grant, allocate, combine and transfer profitable portions of property rights

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(1) The projection of China and Peru (2018): <https://elperuano.pe/noticia-la-proyeccion-china-y-peru-74059.aspx>

In this sense, what is traditionally understood as the Real Estate Sector (purchases, sales and leases of land and buildings) is increasingly non applicable in a global context where control over land may be exercised through control over property rights that are lesser than legal ownership but in many cases more valuable. Many financial transactions with respect to real estate control these vast amounts of property without ownership.

Below are current definitions of the real estate sector that are in line with the criteria we adopt for this research.

## **2.2 DEFINITION OF THE CONCEPT OF REAL ESTATE RIGHTS**

Property Rights sometimes called Real Estate rights are powerful and are often profitable rights in themselves whether they include the right of legal ownership or not.

Real estate rights are described using the metaphor of a “bundle of sticks.” The “sticks” in this metaphor refer to usage/control rights legally recognized, such as the right to use a property, rights to exclude others from using a property, rights rent a property, right to use a property for a duration of time – these usage/control rights may be owned and used by one owner (a legal person, a government, a company) or one owner may distribute these rights to third parties, for various durations of time, while retaining ownership of the property.

Legally recognized property use rights are important in the case of Peru because to attract foreign investment to finance and complete infrastructure projects, the Peruvian government often uses a concession property model where it retains ownership of its property and grants an Asian company (backed by a letter of credit from a foreign government, such as the People's Republic of China) long term extensive rights to control Peruvian territories that may last for durations of 30 years or more, with very little mechanisms for Peruvian checks and balances once issued.

Normally, the concession agreement grants the Asian company broad rights to exclusively use, develop, operate and maintain the property. These broad rights may go as far as allowing the Asian company the right to extract minerals from the subsoil and become owner of the minerals, the right to build, operate and maintain transportation infrastructure, such as metros and roads coupled with the right to install telecommunication cables along the roadway and maintain ownership of the future use of the telecommunication methods.

One interviewee told us that Peru's granting of these Property Rights to Asian companies, although not an out-right sale of property, is equivalent to Peru selling its sovereignty because giving up long term control of these important rights puts Peru in a position where it will never regain the ability to control its infrastructure industry even at the end of the concession.

- **Real Estate comprises the area, subsoil and airspace:**

"Real estate is property, land, buildings, air rights above land and underground rights below the land. The term real estate means real property, or physical property. "Real" comes from the Latin

root *res*, or things. Others say it is from the Latin word *rex*, meaning "real", since kings used to own all the land in their kingdoms. The United States of America's Constitution initially restricted the right to vote to only real estate owners." <sup>(2)</sup>

"Real estate includes land, and anything fixed, immovable, or permanently attached to it, such as buildings, walls, accessories, upgrades, roads, trees, shrubs, fences, roads, sewers, structures and service systems public." <sup>(3)</sup>

- **Grant rights of Interests in Real Estate Lesser than Full ownership are part of the real estate sector: Yes, they are.**

"A concession agreement typically refers to a contract between a company and a government that gives the company the right to operate a specific business within the government's jurisdiction, subject to certain terms." <sup>(4)</sup> Basically, a concession refers to a grant of rights, land or property by a government, local authority, corporation, individual or other legal entity. Utilities, such as water supply, can function as a concession. In the case of a public service grant, a private company enters into an agreement with the government to have the exclusive right to operate, maintain and carry out investments in a utility (such as a water privatization) during a certain number of years. Other forms of contracts between public and private entities, namely leases and management contracts (in the water sector often called by the French term *affermage*), are closely related but differ from a concession in the operator's rights and remuneration. A lease may grant gives a company the right to use, possess and operate and maintain, according to the lease terms, a public utility, but the property remains the responsibility of the government (owner). Under a management contract, the operator will collect the revenue only on behalf of the government and, in turn, be paid an agreed fee.

A grant of land or property by a government may be in exchange for services or for a particular use, a right to undertake and benefit from a specific activity, a lease for a particular purpose. A concession may include the right to use some existing infrastructure necessary to conduct a business (such as a water supply system in a city); in some cases, such as mining, may simply involve the transfer of exclusive or non-exclusive easements.

In the private sector, the owner of a concession—the concessionaire—typically pays a fixed sum or percentage of income to the legal owner of the property. Examples of concessions within another business are concession positions within sports venues and movie theaters and concessions in department stores operated by other retailers. Short-term concessions may be granted as promotional space for periods of time as short as a day.

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<sup>(2)</sup> Real estate, what it is and how it works: <https://www.thebalance.com/real-estate-what-it-is-and-how-it-works-3305882>

<sup>(3)</sup> The Dictionary of Law. What is Real Estate? <https://thelawdictionary.org/real-estate/>

<sup>(4)</sup> Definition of Concession Agreement. <https://www.investopedia.com/terms/c/concessionagreement.asp>

Depending on the applicable law, the concession may allow the concessionaire to retain or maintain ownership of the assets, or ownership and maintenance obligations may revert to the government or just ownership may revert to the government and the concessionaire may retain the right to maintain and operate.

- **For the purpose of this research we refer to real estate as a real property: <sup>(5)</sup>**

"Real property" is a less commonly used term and as such, it is a less commonly understood concept. Real estate is a broader term and includes the land itself and also any building and other improvements attached to the land. It also covers the rights to use and enjoy certain lands, as well as any of their improvements.

Tenants may have the right to possess a unit, building or land for a specified duration of time for a particular use, regulated by a lease – the tenant's possessory right is a, a real estate interest recognized by law but it is not considered "real estate" or ownership.

Real Estate includes real property and the rights attached to the property. This rights package is a broad term used to organize property rights, as they relate to real estate. Simply put, it grants property owners the ability to use their property as they see fit subject to law

The most important rights regarding Real Estate consists of five rights discussed below and are often referred to as the Bundle of Rights (Bundle of Real Estate Interests) discussed later in this paper

1. The right to own is the right to occupy the property.
2. The right to control is the right to determine interests and uses for others.
3. The right to enjoy is the right to use the property without external interference.
4. The right to exclude is the right to reject the interests or uses of others for property.
5. The right to dispose is the right to determine how and whether the property is sold or granted to another party.

There are other exceptions and complex restrictions to these legal rights and treatments. In general, the difference between real estate and real estate comes down to the inclusion of the set of rights. Real property consists of both physical objects and common law rights, while real estate consists only of physical objects."

The following table presents some of the real estate sector activities relevant to the different investment sectors in countries:

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<sup>(5)</sup> Investopedia. Real Estate vs. Real Property  
<https://www.investopedia.com/ask/answers/100214/what-difference-between-real-estate-and-real-property.asp>

<b>ECONOMIC SECTOR</b>	<b>TYPE OF INVESTMENT PROJECT</b>	<b>DIRECT ACQUISITION OF REAL ESTATE RIGHTS</b>	<b>NON-DIRECT ACQUISITION OF REAL ESTATE RIGHTS</b>
Real estate	Typical Real Estate Investments	Purchase, and acquisition of all types of rights in real estate assets for the development of housing, commerce, industry, agriculture, mining and other projects.	
Finance	International commercial banks; mortgage investment funds, securitization of real estate assets and others.	Purchase and/or leases and establishments to manage financial services.	Percentage of rights on real estate assets on the area and subsoil area incorporated in financial securities.
Mining, gas and oil	Mining, gas and oil exploration and exploitation activities.	<ul style="list-style-type: none"> <li>• Mining concessions acquired according to the special laws of the country.</li> <li>• Direct purchase of land from land owners over the area of mining concessions.</li> <li>• Lease of land for exploration activities.</li> <li>• Purchase of easement rights for ore transport is and laying pipes.</li> </ul>	
Energy/Telecom munications	Construction and maintenance of power distribution and telecommunications networks.	Purchase of easement rights for the laying of power transmission lines, antennas and data transmission lines	
Infrastructure	Construction and maintenance of infrastructure facilities (bridges, roads and others).	Acquisition of public concession rights to roads, avenues, roads and land on both sides of the tracks.	The concessionaire acquires control of the public land through which it passes the road for a certain number of years.

Industry and manufacturing	Production of goods for local markets and int.	Purchase and/or lease industrial warehouses (warehouses).
Agricultural and forestry concessions	Agricultural and forestry activities in general.	<ul style="list-style-type: none"> <li>• Purchase and/or lease rural land for agricultural use or plantations.</li> <li>• Acquisition of public concession rights on forest resources according to the law of the country.</li> <li>• Purchase and/or leasing of processing plants and warehouses.</li> </ul>
Trade	Import/export activities, shopping centres and markets.	<ul style="list-style-type: none"> <li>• Purchase, lease or rights in land and buildings for the development and construction of shopping centers.</li> <li>• Purchase and/or lease or other rights on land for the development and construction of deposits.</li> </ul>
Tourism		Purchase and/or lease and buildings for the development of hotels and any other type of tourist services center.
Services	Consulting and other services	Purchase and/or lease of offices to manage consulting services.

### 2.3 OBJECTIVE AND SCOPE OF THE RESEARCH:

The objective of this research is to make an initial attempt to identify and understand the investment of Asian countries in the field of real estate rights and the impact of their investment.

This investigation is a first step to a large topic that merits further research. This initial investigation is limited to the case study of Peru, however, many of the lessons learned from Asian investment in this study are applicable to Asian investment throughout the Latin American



region. Using the case of Peru, we define the measurement and analysis criteria to refine research on this topic both in Peru and other Latin American countries.

The study seeks to bring new ideas not only to forefront of academic discussion of the significance and use of property rights to control land, economies and build economic power throughout the world, but also to the business community of the United States and other countries that may be interested in entering through the current open window of opportunity, created by the Odebrecht scandal, to build this type of power in Latin America.

The study also seeks to ring the alarm bell, to be heard by U.S. foreign policy makers on the long-term global impact of Asian investment in Latin America – they need to know that Asians are investing today with the strategic vision to become long term institutional governmental players in Latin America's geopolitics.

## **2.4 Methodology:**

- **In-depth qualitative interviews**

This research was conducted through qualitative research techniques, specifically on the basis of in-depth interviews with real estate experts, real estate owners, real estate investors, multinational and national law firms representing Asian companies, Peruvian government officials, Asian business associations and financial institutions and diplomats of various embassies with their headquarter offices located in Lima Peru.

- **Desk/Secondary research**

To complement, augment and support information from interviews, a secondary research (desk research) was conducted to obtain economic and real estate studies with information statistics that are mainly derived from works posted on the internet by government organizations as well other industry groups – those works are cited throughout the study.

- **Discussion guide**

The qualitative interviews conducted in the form of an in-person conversation allowed interviewees the freedom to express all of their thought and experience regarding the topic and began with the interviewer's proposition of the following questions to help guide the conversation:

**A) In which economic sectors do the investors of the Asian country (which you represent or which you are related) operate?**

E.g. Mining, gas and oil; services and construction, exterior, finance, infrastructure, telecom etc.

**B) Do you agree that to carry out their activities in the sector that corresponds to it, companies must operate (directly/indirectly) some type of business or investment related to the real estate sector in Peru?**

**C) Which activities do you consider to be related to the REAL ESTATE sector?**

**Examples (purchase/lease of its institutional offices, warehouses, land to guarantee operations, control of easements, use rights, concession agreements from a sovereign government granting use and development rights, etc.).**

**D) Are you aware of significant investments made by your country in the Peruvian real estate sector? (see Examples in C above.).**

**E) What kind of real estate operation (see Examples in C above) predominates your company or companies from your country?**

**F) Are temporary (concession) (rental) or permanent (buy/sell) rights in real estate prevalent in your business or companies that you work with?**

**G) What percentage (%) of Asian companies operate through companies with funding from companies from other countries (partnerships to spread the risk among companies from more than one country)? (along with Peruvians or investors from other Non-Asian countries).**

**H) Do you consider it important that real estate rights (see Examples in C above) be secured as part of your investment project? For what reasons? Which method do you prefer to secure them and for what duration of time?**

**I) Is there resistance in the host country of your investment (in this case Peru) when investors from your country acquire rights in real estate sector? Does this resistance cost your countries' companies time and or money? What is the best way to avoid this type of resistance?**

**J) Why is your country interested in investing in Peru? What is the long-term strategy? How concerned with immediate profits are your companies?**

The list of interviews is presented in the **Appendix** of this document.

### III. SECTION TWO: THE LEGAL FRAMEWORK FOR ASIAN INVESTMENTS IN PERU

This section presents the Peruvian general legal framework that applies to foreign investment, with emphasis in the international treaties between the government of Peru and Asian countries.

The legal system in Peru is based on the civil law, which means that “its core principles and rules are codified into a referable system which serves as the primary source of law” <sup>6</sup>. Every law and every judicial and administrative decision must be issued within the framework of principles established in the Peruvian Constitution and the codified legislation.

#### 3.1 THE CONSTITUTIONAL FRAMEWORK FOR FOREIGN INVESTMENTS IN PERU.

The Constitution of 1993, which is currently in force in Peru, guarantees foreign investment in accordance with the most important international investment treaties subscribed by the Peruvian State.

The constitutional rights enshrined in favor of foreign investors are as follows:

- **The right to non-discriminatory treatment against the national investor (art. 63 of the Peruvian Constitution).**

Discriminatory treatment between domestic and foreign investment is prohibited in Peru. This means domestic (Peruvian) and foreign investors are treated equally in the legal areas of, administration, tax and contracts. Both the Constitution and the Law on the Promotion and Guarantees of Foreign Investment (Legislative Decree No. 662) expressly prohibit differential treatment between domestic and foreign capital. Foreign investors and the companies in which they participate have the same rights and obligations as domestic investors and companies.

The ownership of foreigners, whether natural or legal persons, is subject to the same the legal framework as Peruvians, without being able to invoke exception or diplomatic protection. Peru does not place any restrictions on a foreigner's right to property of other than those established by the Political Constitution of Peru (examples of these are that foreigners cannot purchase land in the borders of Peru and its neighboring counties, a foreigner cannot be the unique owner of Media companies, etc.).

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<sup>(6)</sup> Romano-Germanic Legal System – NDU  
<http://www.ndu.edu.lb/courseDescription.aspx?courseId=11101>

- **Right to property must be exercised in accordance with the common good and within the limits of law.**
  - Foreigners, whether natural or legal persons, treated the same as Peruvians, without, in any case, being able to invoke exception or diplomatic protection.
  - However, within fifty kilometers of borders, foreigners may not acquire or possess by title, mines, land, forests, waters, fuels or energy sources, directly or indirectly, individually or in society, except the case of public necessity expressly declared by supreme decree.
  - The law may, only for reasons of national security, temporarily establish specific restrictions and prohibitions for the acquisition, possession, exploitation and transfer of certain goods.
- **Freedom of trade and industry, and freedom of export and import (art. 63 of the Peruvian Constitution).**

Under this principle, prior licenses and registrations for foreign trade were eliminated and export tariffs were also eliminated. Tariffs only apply to imported goods.

In regard to tax measures, both domestic and imported goods have the same legal regime of General Sales Tax (IGV) and Selective Consumption Tax (ISC) as the case may be. The non-discriminatory treatment of the IGV and ISC is part of agreement. Peru in the context of the multilateral trade negotiations of the World Trade Organization (WTO). In particular, the General Agreement on Trade in Goods (GATT).

- **The possibility of freely remitting profits or dividends abroad, subject to payment of the taxes that correspond to it.**

In addition, this law guarantees the right of foreign investors to transfer abroad, in freely convertible currencies, without prior authorization from any authority:

- The full dividend or proven net income from of its investment.
- The consideration for the use or enjoyment of goods physically located in Peru
- The full of royalties and consideration for the use and transfer of technology (Legislative Decree 662, 1991).

- **Guarantee for free tenure and disposition of foreign currency (art. 64 of the Peruvian Constitution).**

This guarantee applies to both the free use of foreign currency deposits and the freedom to carry out other financial transactions in foreign currency including the contracting in foreign currency and sending remittances abroad.

- **The right to use the most favorable exchange rate on the market.**

This right derives from the right to non-discrimination contained in Article 63 of the Peruvian Constitution.

The foreign investment promotion law - Article 9 - established that in all cases where it is appropriate to convert a foreign currency into domestic currency, foreign investors will be entitled to use the most favorable purchase exchange rate time to carry out the exchange operation (Legislative Decree 662, 1991).

Exchange rate policy in Peru is based on the free market; however, there is the possibility of intervention by the Central Reserve Bank. The purpose of the Central Bank is to preserve monetary stability by regulating the currency and credit of the financial system and managing international reserves.

Since the 1993 Constitution, the Central Bank's intervention in the foreign exchange market has been unchanged. In order to give stability to the exchange rate, the bank buys dollars when the exchange rate drops and sells dollars when the exchange rate goes up. The Central Bank also sets the interest rate.

- **The right to free re-export of invested capital.**

Foreign investors under Articles 63 and 64 of the Peruvian Constitution may freely dispose of the capital invested, without the need for any authorization, in the case of the sale of shares, shares or rights, reduction of capital or partial or total liquidation of companies.

This guarantee is also expressly contained in the legislation promoting foreign investment. It implies the possibility of transferring abroad, in freely convertible currencies, without prior authorization from any authority of the central, regional or local government, subject to payment of the taxes of the law, the full of its capital from investments including the sale of shares, shares or rights, reduction of capital or partial or total liquidation of companies. (Legislative Decree 662, 1991).

- **Unrestricted access to domestic credit.**

This principle derives from the nondiscrimination against foreign investment (Art 63 Peru's Political Constitution, 1993) Access to domestic credit is guaranteed under the same conditions as those that apply to local investors. The government cannot intervene, let alone freeze deposits in foreign currency.

- **Free contracting of technology and remittance of royalties.**

Both the domestic and foreign investors have the freedom of intellectual, technical and scientific creation, as well as the right to ownership over such creations and their products (art. 2 inc. 8 Political Constitution of Peru, 1993). The intellectual property rights of foreign investors are subject to the same conditions that apply to domestic investors including tariffs and fees to be paid for the registration and protection of these rights (Article 5, Legislative Decree 662, 1991). The freedom to contract guarantees that the parties may validly agree according to the rules in force at the time of the contract. Contractual terms may not be modified by laws or other provisions of any kind (Art 62 Political Constitution of Peru, 1993).

- **The freedom to acquire shares owned by domestic investors.**

The right of foreign investors and the companies in which they participate to acquire shares, shares or property rights of domestic or sub regional investors is guaranteed. Payment of such acquisitions shall be considered as foreign investment (Article 8, Legislative Decree 662, 1991).

- **The possibility of hiring abroad (foreign) insurance for investment.**

Any natural or legal person may freely take out insurance abroad, mandatory insurance established by law excluded. Under this right, investors may secure their investments even against risks due to domestic policies or conflicts or non-commercial risks, such as damage to, or disappearance of tangible assets caused by political acts of war or civil disturbance.

In this regard, it should be noted that in 1991, Peru, since signed the Agreement Establishing the Multilateral Investment Guarantee Agency (MIGA) of the World Bank. By legal mandate, the Peruvian State provides investors with the possibility to obtain compensation for the loss of their investments by the World Bank's Multilateral Investment Guarantee Agency (MIGA), or other similar entities of which Peru is a member. In the case of foreign investors, the State agrees to the coverage requested by the investors. (art. 47, Legislative Decree 757, 1991). A significant number of investments, mainly in the mining and financial sectors, have been developed under the coverages extended by MIGA.

- **Possibility of signing with the State of Peru legal stability agreements (art. 62 of the Peruvian Constitution).**

Legal stability agreements - also referred to as contracts-law - are based on issues of social, national or public interest. These conventions are granted under article 1357 of the Peruvian Civil Code and have the effectiveness of a law. Therefore, they cannot be modified legislatively or left without effect unilaterally by the State. These "contracts" have a period of no more than 10 years and are also civil and non-administrative in nature and may only be amended or terminated by agreement between the parties. Examples of legal stability that could be granted by the Peruvian government are the following: A stable rate of income tax to be maintained during the term of the

agreement; stability in the labor regime under the workers are recruited; stability in export promotion regimes; etc.

In order to qualify for a legal stability agreement, investors must meet the following requirements: Contribute to the capital of an established company or to establish or make risk investments with third parties, for an amount not less than US\$ 10 million for the mining and hydrocarbons sectors, and \$5 million for other economic sectors.

### **3.2 INTERNATIONAL AGREEMENTS BETWEEN PERU AND ASIAN COUNTRIES (BITS):**

Peru has negotiated a number of various bilateral conventions for the protection of foreign investment (hereinafter BIT). Asian countries that are a legal party to these conventions are listed below in chronological order:

- 1991: Kingdom of Thailand.
- 1993: Republic of Korea
- 1994: People's Republic of China
- 1995: Malaysia
- 2003: Singapore

The BIT agreements were signed with the intention of creating favorable conditions for investments from the benefitted countries listed above. In summary, these conventions include the following important terms:

- 1) Recognition of various types of investment assets under the legal term "Investment" including:
  - a) Furniture, real estate and other real rights such as mortgages and pledges;
  - b) Shares, capital and any other type of stake in companies;
  - c) Rights in money or any other obligation of economic value;
  - d) Concessions granted by law or under contract, including concessions for the exploration or exploitation of natural resources.
- 2) Defining the legal term of "Investor" as any natural or legal person domiciled in Peru, including civil and commercial companies, as well as other associations with or without legal persons engaged in any economic activity.
- 3) Providing assistance and easy procedures to obtain Investor visas and work permits
- 4) Provide assistance and facilities to Investors to obtain permits in relation to investments, in accordance with Peruvian laws and regulations.
- 5) Prohibiting expropriation or nationalization of Investments unless the following conditions are met:
  - a) The expropriation or nationalization is in the public interest;
  - b) The expropriation or nationalization of the interest follows an internal legal procedure;
  - c) There is no discrimination in the aforementioned process;
  - d) The expropriation or nationalization is in exchange for compensation.
  - e) Pay convertible and freely transferable compensation, equivalent to the value of the investments expropriated at the time of expropriation. No undue delays.

- f) Guaranty to Investors, subject to laws and regulations, the transfer of their Investments and the profits obtained, including:
  - Earnings, dividends, interest and other legitimate income;
  - Amounts resulting from total or partial liquidations of Investments;
  - Payments made pursuant to an Investment loan agreement;
  - Royalties;
  - Payments for technical assistance, fees for technical services, administration fees;
  - Payments related to contract projects associated with an Investment;
  - Income.
- g) Allow the exchange rate to be that prevailing in the market.
- h) Recognize the transfer of any right or claim of investors
- i) Prioritize friendly negotiation as a dispute resolution mechanism.
- j) Allow disputes to be submitted to the international arbitration of the International Centre for settlement of Investment Disputes (ICSID). <sup>(7)</sup>
- k) Apply the law of the country that receives the Investment, including its conflict-of-law rules, the provisions of this Convention and the generally recognized principles of international law accepted by both Parties.
- l) Allow consultations through diplomatic channels in the event of any dispute concerning the interpretation or application of the Convention.
- m) Allow the submission of disputes to an ad hoc arbitration tribunal, at the request of either party.

### 3.3 TRADE AGREEMENTS

Asian investments are also protected by both multilateral and bilateral free trade agreements.

#### a) The World Trade Organization (WTO):

Peru is a founding member of the WTO since January 1, 1995 and was a contracting party to the GATT 1947 since October 7, 1951. The WTO Agreements were incorporated into national law by Legislative Resolution No. 26407 of December 1994

The WTO Agreement contains four Annexes. Annexes 1, 2 and 3 are referred to as "Multilateral Trade Agreements", and Annex 4 is entitled "Plurilateral Trade Agreements". These are approximately 60 agreements and decisions, as well as a major revision of the original GATT. Post-1994 negotiations resulted in new legal texts, such as the Information Technology Agreement and the Protocols on Services and Accessions.

The WTO agreements provide a normative complement to Peru's bilateral negotiations with Asian countries and is a framework of reference that may apply complementary during the execution of Trade agreements signed with any country, including Asian countries.

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<sup>(7)</sup> Established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington, D.C. March 18, 1965



### **b) Peru-China Free Trade Agreement:**

The Peru-China Free Trade Agreement was signed April 28, 2009 and entered into force March 1, 2010. The following chapters are included in this agreement: national treatment and market access, rules of origin, customs procedures, trade defense, sanitary (humans) and phytosanitary (plants) safety measures, technical barriers to trade, trade in services, entry temporary business persons, investments, intellectual property rights, cooperation, transparency, treaty administration, dispute resolution and exceptions.

Peru began FTA negotiations with a BIT "Convention on the Promotion and Reciprocal Protection of Investments" signed by the Peruvian and Chinese Governments on June 9, 1994. The main feature of the BIT is the regulation of principles and practices of non-discriminatory treatment of foreign investors and/or their investments, and protection against non-commercial risks of such foreign investment in the receiving country, from the moment in that the investment is made. The FTA includes an investor-state dispute settlement mechanism that allows international arbitration to be attended, in case of violation of the provisions of the BIT. This is not a mandatory first step, dispute, as far as possible, should be first settled with consultation through diplomatic channel

In this context, the parties undertake to treat no less favorable than that accorded, in similar circumstances, to their own investors with respect to the administration, conduct, operation, and sale or other disposition of investments in their country.

As in the other investment treaties signed by Peru, Investors who suffer losses with respect to their investments, due to war, national state of emergency, insurrection, revolt or other similar events, will obtain restitution, compensation or any other type of reparation, no less favorable than that given to its own investors or to investors of a third country.

### **c) Peru-Korea Free Trade Agreement:**

The Peru-Korea Free Trade Agreement (FTA) was signed March 21, 2011 and has been in effect agreement since August 1, 2011. The Peru-Korea FTA pertains to the following topics: National Treatment and Market Access of Goods, Rules of Origin and Procedures of Origin, Trade Defense, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Customs Procedures and Trade Facilitation, Cross-Border Trade in Services, Telecommunications, Temporary Entry of Business Persons, Financial Services, Investment, Electronic Commerce, Intellectual Property, Competition Policies, Public Procurement, Cooperation and Strengthening of Commercial, Labor, Environment and Dispute Resolution and Institutional Affairs.

With regard to investments, the parties undertake to treat no less favorable than that accorded, in similar circumstances, to investors in another country with regard to the establishment, acquisition, expansion, administration, conduct, operation and sale or other form of investment disposal in its country.

Neither Party may impose or enforce any requirement or enforce any obligation or commitment, in connection with the establishment, acquisition, expansion, administration, conduct, operation, sale or other disposition of an investment on its territory

**d) Economic Partnership Agreement between Peru and Japan:**

The Peru-Japan Economic Partnership Agreement was signed May 31, 2011 and went into effect on March 1, 2012.

This Agreement includes the following chapters: Trade in Goods, Rules of Origin, Customs and Trade Facilitation, Trade Defense, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Government Procurement, Cross-Border Trade Temporary Entry of Nationals for Business Purpose, Telecommunications, Competition, Intellectual Property, Cooperation, Transparency, Treaty Administration, Dispute Resolution and Business Environment Improvement. Two declarations have also been obtained with this Agreement: Trade and Environment, and Biodiversity.

**e) Protocol between the Republic of Peru and the Kingdom of Thailand to Accelerate the Liberalization of Trade in Goods and Trade Facilitation and its Additional Protocols**

Peru has signed the following agreements with the Government of Thailand:

- Framework Agreement for a Closer Economic Partnership signed October 17, 2003, approved by Legislative Resolution No. 28431 of December 2004 and ratified by Supreme Decree No. 010-2005-RE of 27 January 2005.
- Protocol between the Republic of Peru and the Kingdom of Thailand to Accelerate the Liberalization of Trade in Goods and Trade Facilitation signed November 19, 2005.
- Additional Protocol to the Protocol between the Republic of Peru and the Kingdom of Thailand to Accelerate the Liberalization of Trade in Goods and Trade Facilitation signed November 16, 2006.
- Second Additional Protocol to the Protocol between the Republic of Peru and the Kingdom of Thailand to Accelerate the Liberalization of Trade in Goods and Trade Facilitation signed November 13, 2009.
- Third Additional Protocol to the Protocol between the Republic of Peru and the Kingdom of Thailand to Accelerate the Liberalization of Trade in Goods and Trade Facilitation signed November 18, 2010.

**f) Preparatory activities to signed a FTA Peru-India:**

Peru and India began work on a free trade agreement March 30, 2015, with a Joint Feasibility Study with India being developed and concluded in September 2016. The Joint Feasibility Study comprises the following chapters:

- Macroeconomic Overview
- Trade in Goods
- Trade in Services
- Investment
- Trade Policy
- Trade Facilitation
- Assessing the Economic Impact of a Peru-India FTA
- Economic Cooperation
- Conclusions and Recommendations

### **3.4 THE INSTITUTIONAL FRAMEWORK FOR PUBLIC/PRIVATE INVESTMENTS IN PERU.**

Peru also has a specific regulatory framework to promote foreign investment, and participation in Private Public Partnerships (PPPs), creating a favorable climate for Asian investment in the country.

The most relevant laws in this area are discussed below:

#### **a) Legislative Decree 662 of 1991, Law granting a regime of legal stability to foreign investments by recognizing certain guarantees.**

The State of Peru promotes and guaranty for foreign investments made and to be made in the country, in all sectors of economic activity and in any of the business or contractual forms permitted by national law.

This law covers the following matters: promotion and guarantees for foreign investment, legal stability to foreign investment, registration of foreign investments and technologies in the agency for intellectual property (INDECOPI) and the policymaking process to promote foreign investment<sup>1</sup>

#### **b) Legislative Decree 674 of 1991, Law on the Promotion of Private Investment of State-Owned Enterprises.**

This law declares it in the Peruvian national interest to promotion private investment in the field of the public companies owned by the government. It creates the process for the privatization of public companies by the following modalities: the transfer of all or part of shares and/or assets, in the latter case, including by swapping real estate, the increase in its capital, and the express of partnership contracts, joint venture, joint venture, partnership, service provision, lease, management, or similar. It also creates the Agency for the Promotion of Private Investment - PROINVERSION, which is responsible for designing and executing the process of promoting privatization.

**c) Legislative Decree 757 of 1991, Framework Law for the Growth of Private Investment.**

It aims to guarantee free initiative and private investment, made or to be carried out, in all sectors of economic activity and in any of the business or contractual forms permitted by the Peruvian Constitution and the Laws. It establishes rights, guarantees and obligations that apply to all natural or legal persons, domestic or foreign, who hold investments in the country.

The law contains the following measures:

- Legal stability of the economic regime comprising guarantees for free supply and demand and the elimination of any reserve in favor of the State, whether partial or total, for the conduct of economic activities or the exploitation of natural resources, with the exception those relating to protected natural areas.
- Legal certainty of incomes tax rates for investments
- Legal stability conventions
- Private investment insurance
- Legal security regarding environmental obligations

**d) Law 27444 of 2001, Law on General Administrative Procedure (Single Text Ordained Supreme Decree No. 004-2019-JUS).**

It sets forth the rules for the administrative procedures undertaken by public entities, including special procedures

The law contains the following measures that apply during administrative procedures:

- The right of citizens and companies to be notified; access to the file; rebuttal of the charges charged; to make arguments and to make supplementary arguments; to offer and produce evidence; to request for query where appropriate; to obtain a reasoned decision, based on law, issued by the competent authority, and within a reasonable time; and to challenge the decisions that affect them.
- The obligation of entities to provide the necessary conditions to access the information they manage, without expression of cause, except those affecting personal privacy, those linked to national security or those who are expressly excluded by law
- The responsibility of the administrative authority for damage caused as a result of the malfunction of the administrative activity
- Measures for the establishment of automatic approval procedures and for the application of positive silence.
- The obligation of State entities to determine the requirements, costs and deadlines of the procedures in a Single Text of Administrative Procedures - TUPA.
- Measures to facilitate the implementation of the electronic administrative procedure

**e) Law 28933 of 2006, Law Establishing the System of Coordination and Response of the State in International Investment Disputes.**

It creates a Special Commission in the Ministry of Economy and Finance that represents the State of Peru in international investment disputes, both in its previous stage of direct negotiations and at the arbitral or conciliation stage itself.

**f) Law No. 29230 of 2008, Law Boosting Regional and Local Public Investment with Private Sector Participation**

It promotes the implementation of regional and local impact investment projects, with the participation of the private sector, by investment agreements with Regional Local Governments.

Some of the main measures are:

- Authorizes regional and local governments to sign investment agreements with selected private companies to finance and/or execute one or more investment projects
- Creates the mechanism of works by tax and allows the award of the Certificate "Regional and Local Public Investment- Public Treasury" (CIPRL) that may be used by the private company solely and exclusively for its application against payments on account and adjustment of third-rate income tax
- Grants Public Investment Certificates for public entities to reimburse private companies for the costs of updating investment feasibility studies.

**g) Legislative Decree 1361 of 2018, Legislative Decree that promotes the financing and execution of projects through the mechanism of Works for Taxes.**

In accordance with this standard, national government entities may, together with other national government entities, Regional Governments and Local Governments, enter into agreements for the implementation of investment projects. This mechanism has been widely used specially by large mining companies with foreign investors in order to develop infrastructure and social projects in the area of influence of their investment.

**h) Legislative Decree 1362 of 2018, regulating the Promotion of Private Investment through Public-Private Partnerships and Projects.**

- Declares the promotion of private investment through Public-Private Partnerships and Asset Projects in the national interest.
- Defines Public-Private Partnerships as a form of participation of private investment, through long-term contracts in which the State of Peru intervenes, through a public entity and one or more private investors.
- Public Private Partnerships are classified into:

- Co-financed: these are those that require co-financing, or the granting or contracting of financial guarantees or non-financial guarantees that are significantly likely to demand co-financing.
- Self-funded: these are those with their own revenue generation capacity, which do not require co-financing.
- b) Establishes private initiatives as a mechanism by which private sector legal persons, domestic or foreign, the consortiums of the latter, or natural persons consortia with private sector legal entities, national or present initiatives for the development of projects under the public-private partnership process.
- c) The Private Public Partnership contract is a sufficient title for the investor to assert the rights conferred on him by that instrument against third parties. (to use the contract for financial purposes, for instance).
- d) Empowers the government investment authority (PROINVERSION) to design, conduct and conclude the process of promoting private investment of projects developed through the modalities of Public Private Partnership and Asset Projects at the national level.

**i) Legislative Decree 1252 of 2016, Legislative Decree that creates the National System of Multiannual Programming and Investment Management.**

Guides the use of public resources for investment for the effective provision of services and the provision of the necessary infrastructure for the development of the country.

The main measures are as follows:

- The obligation of public sector entities to carry out multi-year investment programming, considering as the main objective the closing of infrastructure gaps or access to public services for the population
- The obligation to allocate public funds to the effective provision of services and the provision of infrastructure with a territorial approach.
- The obligation of entities to formulate a multi-year investment schedule and carry out them under the scheme comprising programming, formulation, execution, maintenance and supervision and monitoring.

**j) Law No. 27446 of 2001 National Environmental Impact Assessment System Act.**

Establishes environmental certification procedures for the implementation of investment projects which follows the following phases: Environmental Impact Statement; Semi-detailed Environmental Impact Study; and Detailed Environmental Impact Study.

**k) Legislative Decree 1192 of 2015 approving the Framework Law on the Acquisition and Expropriation of real estate, transfer of state-owned properties, release of Interferences and dictates other measures for the execution of infrastructure works.**

Declares in the primary public interest the Acquisition and Expropriation of real estate, transfer of property owned by the State and release of Interferences for the execution of Infrastructure Works. Sets the rules for the following procedures:

- The acquisition of real estate for the execution of infrastructure works
- The expropriation of real estate
- Co-active enforcement procedure
- The transfer of property owned by the state
- The release of interference
- Legal physical sanitation of property in the area of execution of infrastructure works

### 3.5 THE PERUVIAN LEGAL AND INSTITUTIONAL FRAMEWORK FOR REAL ESTATE PROPERTY RIGHTS

#### a) The Peruvian Constitutional framework:

The Peruvian Constitution of 1993 protects private property, whether that of nationals or foreigners, through the following provisions:

- **Economic Pluralism:** "Article 60.- The State recognizes economic pluralism. The national economy is based on the coexistence of various forms of ownership and enterprise"
- **Inviolability of Property Rights:** "Article 70.- The right to property is inviolable. The state guarantees it. It is exercised in accordance with the common good and within the limits of law. No one may deprive an owner of property except on the basis of national security or public necessity, declared by law, and upon payment in cash of fair compensation including compensation for the possible harm. There is action before the judiciary to answer the value of the property that the State has indicated in the expropriation procedure."
- **Property of Foreigners:** "Article 71.- In regards to property, foreigners, whether natural or legal persons treated equally, without, in any case, being able to invoke exception or diplomatic protection."
- **Prohibition for Foreigners:** Within fifty kilometers of borders, foreigners may not acquire or possess by title, mines, land, forests, waters, fuels or energy sources, directly or indirectly, individually or in society, under penalty of lose, for the benefit of the state, the right thus acquired. The case of public necessity expressly declared by supreme decree approved by the Council of Ministers in accordance with the law" is exempt.
- **National Security Restrictions:** "Article 72.- The law may, only for reasons of national security, temporarily establish specific restrictions and prohibitions for the acquisition, possession, exploitation and transfer of certain goods."

- **Land Ownership Rights:** Article 88.- The State preferably supports agricultural development. It guarantees the right of ownership over the land, privately or communally or in any other associative form. The law can set the boundaries and extent of the land according to the peculiarities of each area. Abandoned lands, according to legal forecast, are passed to the State's domain for award for sale.
- **Property of the Peasant and Native Communities:** Article 89.- The Peasant and Native Communities have legal existence and are legal persons. They are autonomous in their organization, in communal work and in the use and free disposal of their lands, as well as in the economic and administrative, within the framework established by law. Ownership of their lands is imprescriptible, except in the case of abandonment.
- **Ownership of Natural resources:** Article 66.- Natural resources, renewable and non-renewable, are the heritage of the Nation. The State is sovereign in its use. The conditions of its use and grant to individuals are fixed by a law approved by more than two third members of the parliament. The concession grants its holder a right in rem, subject to such legal rule.

**b) Laws regarding the acquisition and protection of Real Estate property rights in Peru:**

- **Civil Code:** It sets forth the rules for the acquisition, transfer and protection of property rights and other rights.
- **Law 24656 General Law on Peasant Communities:** It establishes the right of communities to autonomy in land use, as well as economically and administratively. Each Peasant Community determines the regime of use of its lands, in communal, family or mixed form.
- **Law 26505 of 1995, Law on Private Investment in the Development of Economic Activities on the Lands of the National Territory and the Peasant and Native Communities:** The State guarantees to any natural or legal person, national or foreign, free access to landownership. Peasant and native communities can freely transfer their lands with the approval of two-thirds of their members.
- **Supreme Decree 022-2016-Housing: Regulations for Territorial Conditioning and Sustainable Urban Development.** Regulates the technical procedures followed by local governments at the national level, in the exercise of their competences in the field of soil planning and management, territorial conditioning and urban development of their constituencies.
- **Law 29090 of 2007 regulating building licenses.** Sets forth the requirements and procedures for urban qualifications and buildings. It regulates the following aspects:
  - Certificate of zoning and roads
  - Certificate of urban and building parameters
  - License for ratings



- Building license
  - Reception of works
  - Enablement registration
  - Approval of regularization of executed urban ratings
  - Urban enabling by trade
  - Building compliance
  - Factory inscription (building)
- **Law 28296 of 2004, on the Cultural Heritage of the Nation.** Establishes national policies of defense, protection, promotion, ownership and legal regime and the fate of the assets that constitute the Cultural Heritage of the Nation.
  - **Law No. 29151 of 2007 on State-owned property.** Regulates procedures for the acquisition of Government real estate property rights. It includes the following procedures:
    - a) The registration of land in favor of public entities (state owned land)
    - b) Award in sale of state-owned land
    - c) Issuance of use rights regarding government real estate to public and private nonprofit entities
    - d) Waiver or extinction of state-owned land use affectation
  - **Law 27157 of 1999, Law on the regularization procedures for houses build without building licenses and norms for properties in condominiums.** Establishes procedures for owners of buildings built before December 31, 2016, who have been built without a building license, construction compliance or do not have building declaration and subdivision agreements can regularize their situation.

### 3.6 PRELIMINARY CONCLUSIONS:

The Peruvian institutional framework is investment-friendly. However, from the interviews conducted it can be noted that the main difficulties in implementing investment regulations are:

- Difficulties in reaching agreements with local and regional government bodies due to widespread institutional weaknesses.
- The coexistence of rights either in favor of local communities, individuals or custodians, in the areas allocated for private investment in infrastructure and there is no national body to regulate/coordinate development in these communities.
- Difficulties in acquiring property in investment areas because of informal titles.
- Difficulties in obtaining permits and licenses despite the simplifying rules on the subject due to deficiencies in the local and regional governance.
- The intervention of different governing bodies in the investment processes.
- Difficulties in recovering investment in cases of refusal of affected populations.

The fact that investment modalities under PPPs are affected by corruption cases and controls on them have led investors to currently prefer to channel investments through government-to-

government agreements. Recently the infrastructure of sports complexes for the August 2019 pan-Americans has been carried out under this modality, in which case they are exempt from all the current regulations for the government's contracts, creating a kind of ad hoc regime.

The Chinese government has executed important agreements that allow it to protect its companies' investments in Peru. On the other hand, its interests in the country have to be constructed in the long run, so it is at a wide advantage over foreign investments that must report profits in the short term.

#### **IV. SECTION THREE: ASIAN INVESTMENT IN THE REAL ESTATE SECTOR – FINDINGS OF THE RESEARCH**

In this section we present the results of our exploratory research that allows us to define basic criteria for mapping and analyzing Asian investments in the Real Estate sector of Peru.

First, we present the general information that allows us to define which Asian countries presence is relevant in the Peruvian case and second the findings and ideas generated from the qualitative interviews conducted in the Peru's capital city of Lima, Peru, between July 15 – 29, 2019.

Not all countries in Asia make investments in Peru. As we have seen in the previous sections, some Asian countries such as Japan and China have a long-standing trade relationship with Peru. Today, new players such as South Korea and India also appear as major investors, albeit quite far from the top two's (China and South Korea) investment volume.

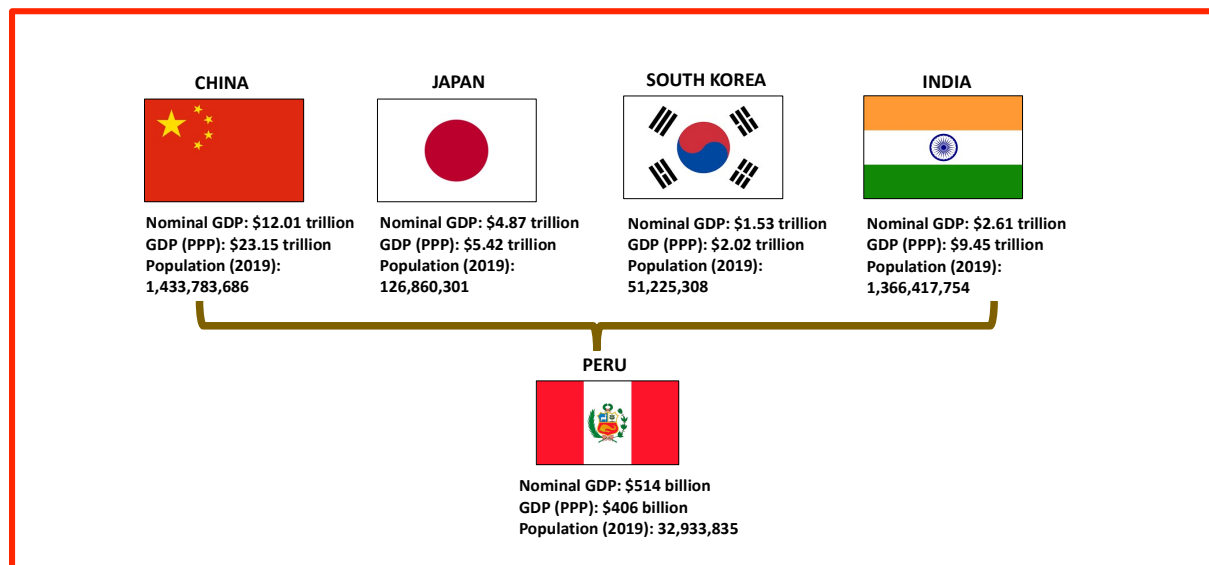
##### **4.1 THE PRESENCE OF ASIAN ECONOMIES IN PERU:**

While international treaties signed by Peru and the trade integration forums in which Peru participates have connected it to all countries of the Asian continent (e.g. APEC and Silk Road Initiative), not all Asian countries have relevant investments in Peru.

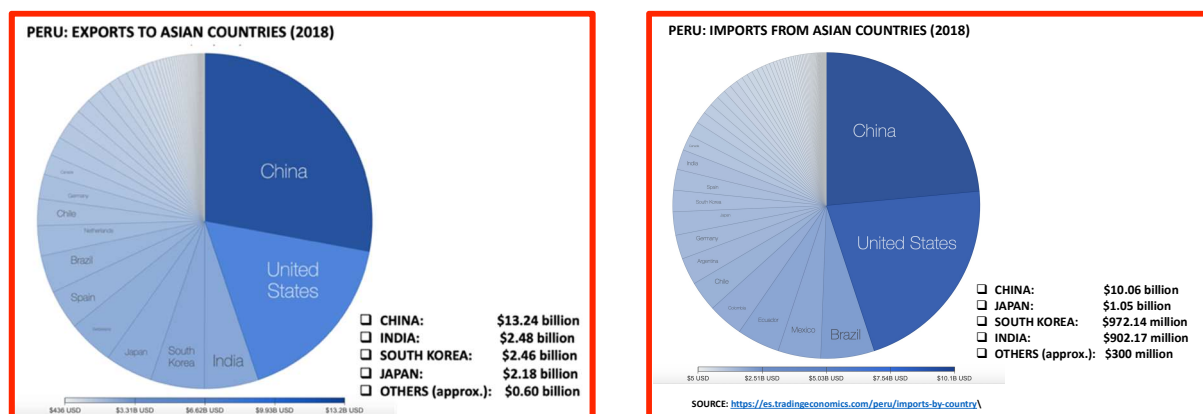
For this work, the following countries in Asia will be taken into account: Japan, China, South Korea and India. This selection is justified because of the relative importance of these countries' economies in the world order. However, investment from other Asian countries will be deemed relevant in the context of this work and will be taken into account within the analysis.

Below are some illustrations that compare the economies of the selected countries with the Peruvian economy, as well as their participation of the total investment portfolio received by Peru.

## GDP of four selected Asian economies and Peru:



## Peru: imports/exports to Asian economies:



Source: Charts produced by the project team (August 2019)

## Asian investment in Peru

A study on Asian investment in Peru conducted in 2013 by the Universidad del Pacifica, one of the most prestigious universities of economics and business in Peru, contains statements that remain valid and with which we fully agree on this work:

"It is difficult to trace the total amount of FDI coming from Asian countries into Latin America, because of the tendency to use tax havens in Panama and the Caribbean to redirect such investments across the Americas. However, it appears that the appeal of this region as an Asian FDI recipient remains less than in that past era. Without considering tax havens, Brazil remains as the top destination for Asian investment, now largely from China and Rep. Korea. This is not

surprising, as Brazil has the largest domestic market in the region, and strong trade relations with MERCOSUR partners and other South American countries to supply with manufactured goods and raw materials. Mexico is also a major destination for Asian FDI, in large part because of its role as a gateway to the US and Canada markets through NAFTA<sup>27</sup>, but also because of its Economic Partnership Agreement (EPA) with Japan signed in 2005.

Historically speaking, Peru has been an important destination for Asian FDI. Back in the 1960s, Peru accounted as the second receiver of Japanese FDI in Latin America. However, this was gradually lost over the years. By 2012, the main investors in Peru were Spain (24.3%), United States (13.3%) and South Africa (7.7%) and the main sector receiving this investment was mining, with 23.9% of the total. Asian investment is now led by China who constitutes 3.5% of the US\$22.7 billion FDI receipt by Peru in 2012". <sup>(8)</sup>

Currently, China, Japan and South Korea lead direct and indirect investment in Peru through their companies (often owned by their respective governments), this investment occurs mainly in the mining and energy sectors, and, in the case of China a growing presence in the infrastructure sector.

China is increasing its presence in the Peruvian economy, apart from its large investments creating a significant presence in Peru's mining sector.

China's presence continues to grow large in Peru because, to date no other world country rivals China's ability to (1) provide much needed long-term billion dollar financing for Peru's back-logged infrastructure projects and (2) provide technical support and capacity to close the Peru's huge infrastructure, telecommunications and public transport gaps.

Currently in Peru, more than 180 Chinese companies are registered and operating legally; there are several associations to promote Chinese business in Peru; and some of these businesses and associations are helped with support from prestigious international law firms in Peru, as is the case of the *Asociación de Empresas Chinas en el Perú* <sup>(9)</sup> designed for social and integration of the Chinese with the Peruvian community, along with a very strong interest in sharing experiences and facilitating Chinese operations in Peru.

The corporate boards of the Chinese companies operating in Peru have representatives of prominent Chinese state-owned oil and mining companies (SAPET, CNPC, Shougang, Chinalco, MMG), banks and technology companies.

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<sup>(8)</sup> 2013. Cynthia A. Sanborn and Alexis Yong. Peru's Economic Boom and the Asian Connection. Discussion Document. Woodrow Wilson Center for Scholars. Washington, DC. University of the Pacific. Research Center. Page 21.

<sup>(9)</sup> Interview with lawyer Viviana García, responsible for China Desk of Philippi Prietoarizosa Ferrero (PPU Legal) Law Firm. Date: July 22, 2019.

Over the last decade, Peru is considered the number one location for Chinese mineral investment in Latin America, with at least fifteen large Chinese companies (related to the Chinese government) legally granted important mining concessions from the Peruvian government.

As we will see further in this initial study, many of current Chinese investments in the mining sector involve, revolve around and derive value from the Chinese acquisition of rights in real estate assets (such as, mining rights, purchase of surface land, easements, leases, construction of facilities.) and therefore implicitly represent a significant volume of investment in the Peruvian Real Estate Sector.

Below is a chart summarizing the total investment volumes for each of the Asian countries comprising our research, as well as an estimated number of companies operating in Peru and the main economic sectors in which they operate.

COUNTRY	NUMBER OF ENTERPRISES IN PERU	INVERSIONES TOTALES EN US\$ (estimated)	MAIN ECONOMIC SECTOR
CHINA	180-200	15,000 million	75% mining sector
JAPAN	100-150	10,000 million	60% import/export.
SOUTH KOREA	100-120	6,000 million	80% mining and energy.
INDIA	80	80-100 million	80% consultancy and services.

Source: Produced by the project team (August 2019).

## **4.2 THE PRESENCE OF ASIATIC INVESTMENTS IN THE REAL ESTATE SECTOR. RESEARCH FINDINGS:**

Unlike in the United States where we find large Asian investments in the development of Real Estate projects (condos, multifamily residential buildings, commercial buildings and shopping malls), the presence of Asian investment in these sectors is not relevant to the total of foreign direct and indirect investment in Peru.

There are some Peruvian families of Chinese origin, such as the Wong family, who have made significant real estate investments as part of the development of shopping malls, creating their own national brand of a supermarket type store with several locations and including agricultural projects. This, however, can be considered as local investments

One clear reason why large Asian investors prefer not to invest in the classic Real Estate sector (residential, commercial, industrial and agricultural land) may be because of the huge informality in the real estate market that continues to exist in the Peruvian economy.

Informality accounts for 70% of the Peruvian economy, which means that most of Peru's economy is outside the legal markets. In the Peruvian capital city, Lima, approximately 70% of property

owners do not pay property tax and despite efforts of the Peruvian government to grant property titles, most do not hold title to their property (homes) meaning there are large areas of millions of people who live on property with no legal title – making it difficult to verify ownership, determine value and transfer.

Many investors feel that traditional real estate investment is unsecure in Peru, not only because the informal sector and due to the weakness of the Peruvian authorities and government institutions in the tracking and allocation of title and enforcement of property rights.

The stock of real estate assets that are formal and without legal problems is scarce, so it is increasingly expensive to buy or lease land to develop, for example, shopping malls which explains why Asian investors are not interested in the sector Real Estate classic. <sup>(10)</sup>

The informality nearly obliterates a multifamily rental market in Peru — a popular billion-dollar real estate market in the U.S. where developers purchase land and build rental units. Because of the informality and difficulty to create and trade land titles, most Peruvians live generationally – meaning a family lives in the same house with many generations instead of renting.

This does not mean that there is non-indirect acquisition of property rights in Real Estate assets related to Asian investments in the sectors of the mining, energy and infrastructure as defined and explained above. It is in these sectors that there is an increasing influence of Asian investments in Peru.

In the case of the mining sector, Peru's natural resources making it a mining power are self-explanatory. In the case of the energy and infrastructure sector, it is necessary to develop an explanation of the political and economic context in which investments from Asian countries begin to stand out for the control of the market share they are taking of the Peruvian Market.

In Peru the infrastructure gap is around \$150 billion, and the Peruvian government does not have the financial resources or technical capacity to fill this gap. <sup>(11)</sup> This means that in the Peruvian state must partner with the private sector and foreign investment companies to carry out these large infrastructure projects.

Over the last 20 years Brazilian companies have practically co-accounted for all infrastructure projects. The Lava Jato – Odebrecht case (2018) revealed the largest corruption network in Latin America's history and practically paralyzed all major infrastructure contracts.

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<sup>(10)</sup> Interview with Juan José Calle, director Jockey Plaza Shopping Mall. Date: July 17, 2019.

<sup>(11)</sup> Brecha de infraestructura supera los 159,000 millones de dólares.  
<https://larepublica.pe/economia/1395806-brecha-infraestructura-peru-supera-159-mil-millones-dolares/>

Odebrecht's absence leaves the sector free of previous barriers to entry allowing a window for more open competition with from companies from other foreign countries in a sector previously dominated by Brazil. <sup>(12)</sup>.

Today, Chinese and South Korean companies are competing to win Peruvian public bids and contracts for the construction of infrastructure. Some trends are that often to spread the risk, Chinese companies' partner with South Korean companies and other times Chinese companies (who are all part of the government of China) compete with each other to obtain a bid on the same project.

These companies and consortia obtain concession contracts and acquire long term generational rights and control over roads, highways, metropolitan trains, railway tracks, ports and Airports.

One of our findings is that most of the large investments made by Asian countries in Peru directly or indirectly involve the acquisition or indirect control through contracts or agreements with the owners of property rights in the territories in which they carry out their projects or concession contracts that grant them the rights to build, operate, maintain and profit from large infrastructure works for time frames of thirty (30) years or more.

Based on our qualitative interviews and the desk research we conducted in parallel, we present the findings regarding the relationship that these investments have with the Real Estate sector, for each of the businesses and projects that each of the selected countries have in Peru:

#### **a) Real Estate investment in Peru: the case of INDIA.**

India is virtually the world's 5<sup>th</sup> largest economy and one of the most important Asian economies, however, India has invested the least in Peru. As stated to us by a representative of the Indian embassy in Peru <sup>(13)</sup> there are only 450 Indian citizens residing in Peru.

With regard to the Real Estate sector, two Indian business groups that own movie theater chains in Peru, which involves leasing and/or buying assets real estate for the development of the business, but these are small investments that do not represent a great influence within the Peruvian Real Estate market.

However, companies in India have investment plans in the Peruvian Real Estate sector. One of the main developers of Real Estate of India, Shapoorji Pallonji Real Estate recently opened an

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<sup>(12)</sup> Interview with Mr. Jorge Valverde, specialist in Peruvian Investment Promotion Agency (PROINVERSION). Date: July 25, 2019.

<sup>(13)</sup>. Interview with Mr. Arup Kumar Saja, representative of the Indian Embassy in Lima, Peru. Date: July 22, 2019.

office <sup>(14)</sup> in Peru, taking an interest in housing projects and infrastructure projects in the North of the country.

This corporation is part of the Shapoorji Pallonji Group (SP Group) which is a business conglomerate in India with interests in construction, real estate, textiles, engineered goods, home appliances, shipping, publications, power, and biotechnology. Shapoorji Pallonji is regarded as "one of India's most valuable private enterprises." The US\$2.5 billion Shapoorji Pallonji Group have two listed companies, Forbes & Company Ltd. and Gokak Textiles.

In the field of Real Estate, this company is known for building some of Mumbai's landmarks, including the Hong Kong Bank, Grindlays Bank, Standard Chartered Bank and Reserve Bank of India building, Bombay Stock Exchange building and Taj Intercontinental. The company recently announced plans to invest in a deep-sea port, an IT park, hydroelectricity and construction of roads and night shelters for the poor in West Bengal, India.

Some other Indian investment firms have also expressed an interest in getting involved in the mining sector as India imports a significant amount of gold from Peru. India is also working on some projects with the Peru in the technology sector. Furthermore, India companies are also interested in the new Lithium deposits that Peru has recently discovered in the Andes region near Puno.

As companies entering the Peruvian mining sector seek to exploit these deposits, they will have to acquire mining rights from the Peruvian State and rights to existing properties over these deposits.

## **b) Real Estate Investment in Peru: The Case of SOUTH KOREA.**

Approximately one hundred South Korean Companies are registered to legally operate in Peru, including large multinational companies such as Samsung, LG, Daewoo and SK Energy. There are also numerous small and medium-sized enterprises owned by Korean businesses and private citizens of Korean descent in Peru. These small and medium-sized businesses and private citizens invest in Real Estate but it's difficult to quantify the amount of investment because Peru has very informal (and non-existent in some cases) land records and Peru does not track the nationality or descent of a Buyer when they purchase a property.

In the sector involving Real Estate rights, i.e. the negotiation, purchase, lease of land and easements on these in the territories in which the business is conducted by Korean companies especially in the mining, oil, gas and infrastructure sectors, the South Koreans companies have a the fairly ingrained strategy of partnering with other companies to participate in public competitions for the development and construction of infrastructure works and/or for the development of mining projects.

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<sup>(14)</sup>. Shapoorji Real Estate Developers: <https://shapoorji realestate.com/>



In this sense, the duo China-South Korea will become increasingly notorious in Peru especially in the big public competitions (public bids) for the development of infrastructure. (15)

### **c) Real Estate investment in Peru: the case of JAPAN.**

As discussed above, the Japanese, otherwise known as Nikkei, have a long-standing history and influence in Peru. One of the former Presidents was Japanese and his daughter was a candidate for President in the 2016 presidential race. Current estimates indicate that there are about 50,000 Nikkei or Peruvians with Japanese ancestry.

Nikkei have prospered enormously and represent a significant percentage of Peruvian entrepreneurship with their own financial networks and close relationships with large companies in their homeland, Japan.

In addition to being heavily involved in the import, trade and services sector, Japanese have developed financial investment organization, structured much like REITs (Real Estate Investment Trusts) (e.g. Abaco Union Corporation) with extensive investments in the commercial Real Estate sector. (16)

Abaco Union Corp. invests savings, pensions, from each of its 22,000 associates and finances large real estate projects in Peru, an example is a new office building housing the largest Wework in Peru with the corporate offices for Microsoft among other tenants.

Regarding large Japanese investors in Peru, they operate mainly in partnership with local Nikkei companies. (17)

For example, in the case of the Peruvian mining sector, Japanese investors participate in the following major mining projects (18):

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(15) Interview with Mr. XX (who preferred to be anonymous), employee of China Railway Construction Corporation Limited. Date: July 25, 2019.

(16) Interview with Ms. Veronica Miyahira, Real Estate Development Manager, ABACO Union Bank. Date: July 17, 2019.

(17) "(...) Japan's recent business mission this week has seen the highest level of expectation of Asians to conduct business with small and medium-sized companies owned by Peruvians and Nikkei (migrants of Japanese origin)." <https://rpp.pe/economia/economia/empresas-japonesas-buscan-instalar-fabricas-en-peru-noticia-696162>

(18) 2018. Ministry of Energy and Mines (MINEM). PERU, MINE CONSTRUCTION PROJECT PORTFOLIO 2018.

- Quecher Main (Cajamarca region) – Gold mine (5% of a \$300 million project owned by Sumitomo Corp.)
- Quellaveco (Moquegua region) – Cooper mine (40% of a \$5300 million project owned by Mitsubishi Corp).
- Yanacocha Sulfuros (Cajamarca region) – Gold mine (5% of a \$2100 million project owned by Sumitomo Corp).
- Zafranal (Arequipa region) – Cooper mine (20% of a \$1150 million project owned by Mitsubishi Materials Corp).
- Pacific Phosphates (Piura region) - Phosphates (30% of at \$831 million project owned by MitsubishiCorp.)
- Expansion Bayovar – (Piura region) Phosphates (25% of a \$300 million project owned by Mitsui&Co).
- Conga (Cajamarca region) – Cooper, gold (5% of a \$5000 million project owned by Sumitomo Corp.)
- Quechua (Cuzco region) – Cooper (A \$1300 million project owned by JX Nippon Mining Holdings --66%- and Mitsui Mining & Smelting Co. --34%)

The rights to ore are concessions involving the aforementioned mining projects cover about 230,000 hectares of the territories of 17 local Peruvian communities. Considering that all mining projects in operation must acquire land and easements, we conservatively consider that these projects have acquired land equivalent to 5% of the total area involved, i.e. 11,500 hectares (28,400 acres) of land that are controlled by companies with the participation of Japanese investors.

#### **d) Real Estate Investment in Peru: The Case of China**

Chinese investments in Peru have followed an upward curve since the 1992, Shougang Group purchase of the state-owned company "Hierro Peru", dedicated to exploiting and refining iron. This \$118 million investment was the largest Chinese investment in Latin America. Following in the footsteps of this investment, many other Chinese companies invested starting with the mining and oil companies and ending with state-owned engineering and construction companies and financial companies.

Crown jewels for Chinese companies' investment are (1) the large Peruvian mining sites and (2) satisfying the great demand for infrastructure that exists and in the Peruvian state. Through investing in mining, Chinese companies are able to meet part of their demand for raw materials. Through investing in Peruvian infrastructure, as a result of winning Peruvian public bids for infrastructure contracts, the Chinese not only ensure profitability that comes from the administration of these long term concessionary rights over (ports, highways, trains, etc.) but they also gain control over Peruvian sovereignty through the acquiring a near monopoly over of mining rights and property rights in the areas where they develop these projects.

Added to this is the fact that Chinese state-owned enterprises arrive in Peru with their own financing, allowing them to strongly negotiate with the Peruvian governments to for preferential deal terms on “G to G” contracts (Government to Government) but, as most of the lawfirms consulted claim, most Chinese companies seek to comply with the country's hiring rules.

The growing presence of Chinese investment is already very noticeable in the infrastructure, oil and mining sector in Peru:

- **Ports:**

The consortium "Chancay Port Terminals" and Cosco Shipping Port (when?) signed an agreement for the construction of the new port in the Chancay area with an investment of \$3,000 million. The new consortium will be called Cosco Shipping Port Chancay Peru and the Chinese shipping Company will become the operator of the project, with a 60% stake.

The future port will operate on a 42-hectare territorial extension in the Port of Chancay area, a strategic point north of the city of Lima, Peru.

- **Railways:**

China Railway Construction Corporation Limited (CRCC), a company considered the largest railway manufacturer in China, in addition to specializing in road infrastructure projects, has strong interests in the concession contract for the construction of the train linking the Peruvian capital of Lima to Ica in southern Peru. The projected investment is \$3,200 million and will cover more than 300 km in length.

Since 2018, the same company has had the construction contract for the expansion of the Huánuco-Huallanca highway (Peru), worth US\$ 375 million.

- **Oil:**

Sapet Development Peru (founded in 1996), a branch of the Chinese state-owned National Petroleum Corporation (CNPC), China's largest oil and gas producer and supplier, as well as one of the world's leading oilfield service providers in nearly 70 countries, has the exclusive exploitation license for oil and natural gas extraction from lots VII/VI in the city Talara, Piura region, granted by the Peruvian state-owned company PERUPETRO.

- **Mining:**

In mining, Chinese investment is present in large projects. Note that unlike the investment of South Korea or Japan, Chinese companies do not invest in partnership with other international companies may be due to the fact that most of them are state-owned companies with explicit directives from the Chinese governments.

- Shougang Hlerro Peru (Ica region) – Iron (100% of a \$2,000 million project owned by Shougang Group).
- Junin region – Cooper mine (100% of a \$1360 million project owned by Aluminum Corp. of China Overseas Holdings --CHINALCO).
- Pampa de Pongo (Arequipa region) – Coper mine (100% of a 2200 million Million Project owned by Zhongrong Xinda Group Co. Ltd.)
- Don Javier (Arequipa Region) – Cooper mine (100% of a \$600 million project owned by Junefield Mineral Resources Hold Ltd.)
- El Galeno (Cajamarca region) – Cooper mine (at \$3500 project 60% owned by China Minmetals Corp. and 40% owned by Jiangxi Cooper Ltd.)
- Rio Blanco (Piura region) – Cooper mine (at \$2500 million Project 45% owned by Zijing Mining Group Cop.; 35% by Tongling Non-Ferrous Metals Group and 20% by Ziamen C&D Co. Ltd.)
- Las Bambas (Apurimac region) – Cooper mine (a \$5800 project 100% owned by Minerals and Metals Group--MMG).

The mining rights concessions of these Chinese companies comprise territories of around 42 local communities and 250,000 hectares of land. If we consider that to facilitate their operations these Chinese companies have purchased land or acquired easements in 5% of the total territory, Chinese companies are currently controlling about 12,500 hectares (30,875 acres)

Discussing the Chinese presence in Peru, one of our respondents -- who preferred not to be identified by name in the study -- opined that Chinese investments in Peru, as in other countries around the world, ***follow a geopolitical strategy that does not seek to do business but to control the economic and territory of the recipient country.***

This respondent suggested the Chinese thought regarding investment in Peru follows the logic that “If we connect several of our current investments in Peru, iron with copper, railways with telecommunications, ports and roads soon we will have all the pieces for Chinese state companies to control the Peruvian economy and territory. And if we add to all these investments future investments in the Lithium deposits in the Puno region, bordering Bolivia, where new Lithium deposits exist, China could control one of the mineral resources that will be most valuable in the future.”

The interviewee, who has closely followed China's economic activities abroad, is of the opinion that China's long-term goals are, first, to build a railway line that crosses the Andes, second, to eliminate China's need to pass through the Panama Canal to go from one hemisphere to another and, last but not least, reduce the influence of the United States in the area; (3) Eliminating the need for China to pass through the Panama Canal.

All of these opinions are consistent with China's 2016 announcement of its global Belt Road Initiative.

But the danger for Peru is that it is putting its sovereignty up for sale, its need for investments - but now that the U.S.-China Trade War seems to begin - will allow China to penetrate more and more into the Peruvian economy through investments, especially in what and from there, control Real Estate rights and consequently exercise strong control over the Peruvian territory and potentially rest of Latin America, given Peru's strategic location on the continent.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

Peru has a business-friendly legal framework for investment. It has many laws and regulations to ensure that foreign investors will be able to realize an economic return on their investments in Peru despite political and social contingencies that may occur.

Due to its strategic location and important natural resources, most important being mining, many foreign investors are interested in investing in Peru but the last decade has seen most foreign investment from Asian investors, especially the People's Republic of China as the leader in terms of quantity of funds invested, property controlled via various property rights that are not direct ownership.

The foreign investment in the traditional sector of real estate (residential and commercial) is very limited, despite the urgent social need to construct additional housing for the growing population.

Without a doubt, an obstacle to development is the informality of the real estate market that creates uncertainty of property values and title and conditions that make a real estate market unfunctional and non-existent. As an example, the active United States real estate market is one of the largest markets in the world because it is easy to verify title, the amount of previous sales, ownership and values via detailed public records.

Another large obstacle to traditional real estate investment is Peru's institutional governmental weakness. A result of this weakness is that the governmental institutions can't guaranty enforcement of property rights. This problem was brought to international attention with the Odebrecht and cases of political corruption and scandals.

Government corruption also creates a business obstacle for investors who want to develop a Project in the decentralized areas that are further from Lima's political reach and harder to control.

Although foreign investors from the countries we studied do not invest directly in real property, many of the investments they make relate directly to the purchase and control of property rights. In this case, they purchase concessions, easements, use rights from the Peruvian government for mining and the development of large infrastructure projects including (highways and railways for example).

Chinese businesses in the mining sector could have rights over at least 12,500 hectares (30,875 acres) of Peru in the rural areas of Peru and could acquire much more control over additional land and property in the immediate future, as they control highways, rail lines and the Peruvian government continues to grant them concessions without limit. Some countries limit the amount of land a business controlled by a foreign government may own, Peru does not have any limits.

What is discussed throughout this paper, represents a serious threat to Peruvian sovereignty and is occurring at the same time in the rest of Latin American countries. This trend represents a threat to United States of America's geopolitical, security and economic interests in Latin America.

Based on this initial investigation, below are our recommendations:

To work with the United States government, to strategically increase the presence of U.S. companies, especially in the development of infrastructure. This sector could be easy to enter and to "leap frog" to learn from the business experiences of the Chinese and Korean businesses in Peru

To design and implement a method to monitor Asian investment in Latin America, a way to compile up-to-date detailed information about the origin of the investment, the relationship of the investment company to foreign governments and their operation within Peru especially Peruvian politics. The objective of this would be to predict the dangers that conglomerate businesses from one country (such as China) could wield if they gain too much unchecked control.

Help companies from other Asian countries with open markets, like Japan and India, to compete against the Chinese "cartel" that is beginning to form and take control in Peru.

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### International agreements:

1. Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington, D.C. March 18, 1965
2. The World Trade Organization (WTO) agreements.
3. Peru-China Free Trade Agreement (2009)
4. Peru-Korea Free Trade Agreement (2011)
5. Framework Agreement for a Closer Economic Partnership Peru-Japan signed in October 17, 2003, approved by Legislative Resolution No. 28431 of December 2004 and ratified by Supreme Decree No. 010-2005-RE of 27 January 2005.
6. Protocol between the Republic of Peru and the Kingdom of Thailand to Accelerate the Liberalization of Trade in Goods and Trade Facilitation signed November 19, 2005.
7. Additional Protocol to the Protocol between the Republic of Peru and the Kingdom of Thailand to Accelerate the Liberalization of Trade in Goods and Trade Facilitation signed November 16, 2006.
8. Second Additional Protocol to the Protocol between the Republic of Peru and the Kingdom of Thailand to Accelerate the Liberalization of Trade in Goods and Trade Facilitation signed November 13, 2009.

9. Third Additional Protocol to the Protocol between the Republic of Peru and the Kingdom of Thailand to Accelerate the Liberalization of Trade in Goods and Trade Facilitation signed November 18, 2010.
10. Economic Partnership Agreement between Peru and Japan (2011)
11. The Original Protocol and the Three Additional Protocols were negotiated between 2004 and 2010 and have been in effect since 31 December 31, 2011.
12. Bilateral Investment Treaty (BIT) of 1991 with the government of the Kingdom of Thailand for the promotion and reciprocal protection of investments
13. BIT of 1993 with the government of the Republic of Korea for the promotion and reciprocal protection of investments
14. BIT of 1994 with the government of the People's Republic of China for the promotion and reciprocal protection of investments
15. BIT of 1995 with the Malaysian government for mutual investment promotion and protection
16. BIT of 2003 with the government of the Republic of Singapore for the promotion and reciprocal protection of investments

### **Peruvian legislation:**

1. The Constitution of 1993
2. The Civil Code of 1984
3. Legislative Resolution No. 26407 of December 1994 incorporate the WTO Agreements into national law.
4. Legislative Decree 662 of 1991, Law granting a regime of legal stability to foreign investments by recognizing certain guarantees.
5. Legislative Decree 674 of 1991, Law on the Promotion of Private Investment of State-Owned Enterprises.
6. Legislative Decree 757 of 1991, Framework Law for the Growth of Private Investment.
7. Law 27444 of 2001, Law on General Administrative Procedure.
8. Law 28933 of 2006, Law Establishing the System of Coordination and Response of the State in International Investment Disputes.
9. Law No. 29230 of 2008, Law Boosting Regional and Local Public Investment with Private Sector Participation.
10. Legislative Decree 1361 of 2018, Legislative Decree that promotes the financing and execution of projects through the mechanism of works for taxes.
11. Legislative Decree 1362 of 2018, Legislative Decree regulating the Promotion of Private Investment through Public-Private Partnerships and Projects in Assets.
12. Legislative Decree 1252 of 2016, Legislative Decree that creates the National System of Multiannual Programming and Investment Management.
13. Law No. 27446 of 2001 National Environmental Impact Assessment System Act. Legislative Decree 1192 of 2015 approving the Framework Law on the Acquisition and Expropriation of real estate, transfer of state-owned properties, release of Interferences and dictates other measures for the execution of infrastructure works.
14. Law 24656 of 1992 - General Law on Peasant Communities.



15. Law 26505 of 1995, Law on Private Investment in the Development of Economic Activities on the Lands of the National Territory and the Peasant and Native Communities.
16. Supreme Decree 022-2016-HOUSING Regulations for Territorial Conditioning and Sustainable Urban Development
17. Law 29090 of 2007 on Building permits and declarations.
18. Law 28296 of 2004, on the Cultural Heritage of the Nation
19. Law No. 29151 of 2007 on State-owned assets
20. Law 27157 of 1999, Law on the Regularization of Buildings and Rules for property rights in Condominiums.

## APPENDIX

### List institutions visited and professionals interviewed Lima, Peru (July 14-29, 2019)

Institution	Persons interviewed	Date/time
1. <b>DLA PIPER PERU</b> Avenida Victor Andrés Belaúnde 280 Piso 3 San Isidro <a href="http://www.dlapiper.pe">www.dlapiper.pe</a>	<b>Carlos Nuñez</b> Socio/Partner  <b>Ramiro Rubio</b> Asociado/Associate	July 15 - 2:30 p.m.
2. <b>CAPECO – CÁMARA PERUANA DE LA CONSTRUCCIÓN</b> Victor Andrés Belaúnde 147 Edificio Real 3 oficina 402 San Isidro <a href="http://www.capeco.org">www.capeco.org</a>	<b>José Luis Ayllón</b> Director Técnico  <b>Guido Valdivia Rodríguez</b> Director Ejecutivo	July 16 - 4:00 p.m.
3. <b>COOPERATIVA DE AHORRO Y CREDITO ABACO</b> Av. Andrés Reyes No. 420 San Isidro	<b>Verónica Miyahira</b> Gerente General Terras Inmobiliaria (Real Estate Company of ABACO Union Bank)	July 17-10:30 a.m.
4. <b>JOCKEY PLAZA SHOPPING CENTER</b> Av. Javier Prado Este 4200 Surco	<b>Juan José Calle</b> General Manager  <b>Juan Manuel Echevarría Arellano</b> Legal counsel	July 17 - 3:30 pm
5. <b>MIRANDA Y AMADO ABOGADOS</b> Jose Larco 1301 Miraflores	<b>Natalie Paredes</b> Lawyer	July 18– 11 a.m.
6. <b>ASOCIACIÓN PERUANA DE AGENTES INMOBILIARIOS (ASPAI)</b> Miguel Dasso 134 San Isidro	<b>Danielle Herbozo</b> General Manager  <b>Maria Teresa Secco</b> President Ethics and Discipline Committee  <b>Fernando Torres Tasso</b> Vice-president of the Board	July 18-12:30 p.m.
7. <b>U.S. EMBASSY</b>	<b>Esteban Sandoval</b> <b>Jorge Prado</b>	July 18-8.00am

	Officers of the Commercial Department	
8. <b>ESTUDIO HUANCO ABOGADOS</b> Miguel Dasso 156 oficina 801 Miraflores	<b>Henry Huanco</b> Lawyer and Founder	July 19 - 3:00 p.m.
9. <b>PHILLIPPI PRIETROCARRIZOSA FERRERO DIU &amp; URIA (PPU LEGAL)</b> Av. Santa Cruz 888 Miraflores	<b>Jorge Reategui</b> Abogado  <b>Viviana Miranda</b> China Desk - Lawyer	July 22 – 8:00 a.m.
10. <b>PERU – INDIA CHAMBER OF COMMERCE– INCHAM</b> Calle Clemente Decimo N° 483 - San Isidro	<b>Arup Kumar Saja</b> Commercial officer	July 22 – 4:00 p.m.
11. <b>CÁMARA PERÚ ASIA PACÍFICO DE INDUSTRIA, PRODUCCIÓN, COMERCIO, TURISMO Y MEDIO AMBIENTE</b> Av. Angamos Este 2055 /2do Piso San Borja	<b>Jon Tay</b> Director	July 23-4:00 p.m.
12. <b>WE WORK PERU</b> Torre Real 2 Via Principal 133 San Isidro	<b>Raffaella Cuba Noriega</b> Community Associate	July 23-10:00 a.m.
13. <b>FONDO MI VIVIENDA</b> Av. Paseo de la Republica 3121 San Isidro <a href="http://www.mivivienda.com.pe">www.mivivienda.com.pe</a>	<b>Guillermo Sánchez</b> Real Estate and social projects manager	July 23-12:00m.
14. <b>PERU-CHINA CHAMBER OF COMMERCE – CAPECHI</b> Calle Francisco Masías 544, piso 6, San isidro	<b>Teresa Joo Lamg De Siu</b> General Manager	July 24- 3:30 pm
15. <b>CHINA RAILWAY CONSTRUCTION CORPORATION LIMITED</b> Baltazar La Torre 715 San Isidro	A person who preferred to be anonymous.	July 25- 6:00 p.m.
16. <b>PROINVERSION (Peruvian Investment Authority)</b> Av. Canaval y Moreyra 150 piso 9 San Isidro	<b>Jorge Valverde</b> Investment specialist at the Direction of Services to Investors	July 25-11am
17. <b>Institute for Liberty and Democracy (ILD) – Peruvian Think Tank</b>	<b>Gustavo Marini</b> Senior researcher	July 26-11am