

**Clarification Note to Inspection Panel
on the Peru Boosting Human Capital and Productivity DPF-DDO (P156858)**

1. This DPF supports Peru's policy reforms in the areas of (i) enhancing the education policy framework, (ii) facilitating the entry, operation, and exit of firms to foster competition, and (iii) reducing transaction costs in trade. Specifically, the policy and institutional actions supported the recruitment of qualified teachers in disadvantaged areas, extending the school-day model, creating a directorate for school infrastructure, and ensuring quality standards of universities. They have also supported reductions in firms' cost of entry, exit, taxes (particularly compliance costs of VAT), improvements in accreditation systems/institutions for accessing foreign markets, and strengthening the independence of Peru's competition authority (INDECOPI).
2. These specific actions constitute the program of prior actions supported by this Bank loan, as detailed in the Legal Agreement and Letter of Development Policy (LDP), and described more broadly in the Program Document (PD). These actions were achieved by the Borrower (as evidenced by its supporting documentation) prior to the presentation of this DPF operation to the Board of Executive Directors for approval in accordance with Bank policy (OP 8.60).
3. In compliance with OP 8.60, the Bank team analyzed whether the specific policies supported by the Bank's operation were likely to cause significant (i) poverty and social impacts, especially on poor people and vulnerable groups, or (ii) effects on the Member Country's environment; and determined that was not the case. The poverty and social impacts of the prior actions are expected to be either positive or poverty-neutral in the short term (as the Program Document explains), and to be positive over the medium term. With respect to the environmental aspects, the Bank determined that actions supported in this DPF would not have any significant environmental effects.
4. We have not received or seen the official request submitted to the Inspection Panel. Based on the meeting with the Inspection Panel on October 25, 2017, and the description of the claim on its website, we assume that the request stems from discussions local NGOs had in Peru referring to specific environmental/land provisions of the *omnibus* legislation No. 30230. Those environmental/land provisions are included in separate chapters of Law 30230 and are outside the scope of this DPF.
5. Law No. 30230 is an omnibus legislation that contains a large number of different legislative initiatives—in total, 18 chapters with 67 articles, each enacting or amending provisions in different, and in many cases unrelated, policy areas. The areas covered by this omnibus legislation (No. 30230) range from competition policy, to tax policy, to customs administration, to private investment promotion, to public finance administration, and to disaster risk management, among others. Unlike in some other operations where approval or submission of legislation to Congress might be a prior action, in this DPF, approval or enactment of the omnibus legislation as a whole was not a prior action. The Bank supported only specific policy and institutional actions related to productivity growth. Three sections of said law (modifications to the value-added tax, modification to the law on administrative

procedures, and a temporary provision derogating customs stamp duties) were accepted as supporting evidence of compliance of said actions, and these sections could as well have been enacted independently of the omnibus law through the issuance of separate pieces of legislation or regulations and still be considered supporting evidence. These sections amended existing legislation that define competition and tax policy in Peru (Articles 9, 16 and 17, 18, and the Second Complementary Annulment Provision (*Disposición Complementaria Derogatoria Segunda*) amend Law No. 29173, Law No. 27444, Decree-Law 25868, and Law No. 27973, respectively).

6. Omnibus legislation is very common in Peru (as it is in other countries). It is used to bundle a large number of different legislative initiatives and proposals across a wide range of different areas, as well as amendments to, or derogation of, different laws, in one omnibus bill. That is why, when the Bank supports policy actions in DPFs in Peru, the operational and LEG teams work very closely and are very specific about prior actions' wording in our legal agreements, so that they cover only the reforms the Bank supports.
7. Compliance by the Borrower with some of the policy or institutional actions was evidenced by the passage of new legislation or new regulations. In other cases, compliance of supported actions was evidenced by amendments to existing pieces of legislation. For example, prior action No. 6 supported the strengthening of INDECOPI, which was achieved through the issuance of a new decree (Decree 1212), the amendment of Law No. 27444 (as evidenced by Articles 16 and 17 of Law No. 30230) and the amendment of Decree-Law No. 25868 (as evidenced by Article 18 of Law No. 30230). The policy action supported was focused on enhancing the enforcement role of INDECOPI, which is the anti-trust/competition body of the country, to prevent local governments from imposing illegal bureaucratic barriers on firms. The action did not support new policy setting, but rather the agency's power to enforce existing country law. Moreover, said policy action does not include, or is not linked to, any issues related to environmental regulation or regulations on Indigenous Peoples rights.
8. As regards the question of the basis for indicating in paragraph 46 (page 19) of the PD that Law No. 30230 is supported by this operation, it is important to clarify that the sentence conveys that said law contained provisions which served as supporting evidence of compliance of prior action No. 6. It is also important to consider the context of the same sentence where that law is mentioned, as well as the rest of paragraph 46, which goes into detail of how prior action No. 6 would specifically strengthen INDECOPI. It is also important to consider the results envisaged under this operation in Annex 1-Policy and Results Matrix, which are used to ex-post assess the DPF. They include a reduction of bureaucratic barriers associated with the action of INDECOPI, the average amount of monthly VAT withholdings, and a reduction in the time to clear imports through customs, that is, in addition to the result indicators related to education policy and quality of skills.
9. The analytical underpinning of this DPF and the Bank engagement are clearly stated in the PD. The Bank could not (cannot) support all the reforms that take place in the country at certain periods of time, including through omnibus legislation. As with other countries, the Bank engages and supports specific policy or institutional actions based on our analytical work and policy dialogue. In the case of this loan, the engagement was clearly limited to productivity

growth (i.e., quality) and not investment (i.e., quantity). As highlighted at the outset, the PD defines three specific areas of productivity growth that are targeted by this DPF—the quality of human capital, fostering competition pressures, and trade facilitation. These three areas have been identified as critical productivity growth constraints in Peru in the Bank’s analytical work, most notably the 2015 Peru Flagship “Building on Success—Boosting Productivity for Faster Growth.” Moreover, the Bank has a long-standing dialogue and engagement supporting INDECOPI through technical assistance on the effectiveness of competition policy.