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National and International Arbitration in Ecuador

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Constitution of the Republic of Ecuador

The text of the new Constitution of the Republic of Ecuador (the Constitution)[1] was published in the Official Register in October of 2008 after it was approved in a referendum on September 28 of that year. The text is the result of several months of work by the National Constituent Assembly convened to that effect. One of the areas in the Constitution that includes major reforms with reference to methods for alternative dispute resolution pertains to the judiciary and to the administration of justice. The Constitution expressly recognises those methods – arbitration among them.[2] By virtue of this recognition, arbitration of all kinds, of any origin and between all manner of entities and persons is deemed valid in Ecuador subject to the requirements set forth in the Constitution and secondary laws,[3] all of which will be discussed in this paper.

International conventions

According to Ecuador's legal system, international law is subordinated to the Constitution and prevails over and above any other domestic laws,[4] except with respect to human rights where international instruments may prevail over the Constitution if they stipulate more favourable rights to persons.[5]

With regard to international arbitration, Ecuador adopted the main international instruments on this subject quite early:

- the 1928 Havana Convention on Private International Law;[6]
- the 1958 United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention);[7]
- the 1966 International Convention on Settlement of Investment Disputes between States and Nationals of other States (the Washington Convention)[8] – recently denounced;[9]
- the 1975 Inter-American Convention on International Commercial Arbitration (the Panama Convention);[10] and
- the 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.[11]

Arbitration and mediation law: guidelines for applicability

Arbitration in Ecuador is regulated by the Arbitration and Mediation Law of 1997 (AML).[12] The Law proposes a dualist regime comprising rules governing local arbitration in detail and a few – albeit determinant – rules on international arbitration. Additionally, pursuant to the AML, other bodies of law such as the Code of Civil Procedure (CCP), the Organic Code for the Judiciary (OCJ) and the Civil Code[13] may be supplementary to it, provided that arbitration is conducted at law.[14]

With regard to international arbitration, article 42 of the AML categorically provides the following:

> *International arbitration shall be regulated by treaties, conventions, protocols and other acts of international law signed and ratified by Ecuador. Every natural or juridical person, public or private* with no restrictions whatsoever *is at liberty, directly or by reference to an arbitration regulation, to stipulate everything concerning the arbitration proceeding, including its establishment, discussions, language, applicable legislation, jurisdiction and seat of the arbitration panel which may be in Ecuador or in a foreign country.* [Emphasis added.]

The above norm sets forth the principle of preeminence of the free will in matters of international arbitration on the basis of which everything relating to the arbitration proceeding can be freely agreed by the parties resulting in important consequences, such as:

- the parties may elect any norms to conduct an ad-hoc as well as a regulated arbitration proceeding. As a result, this attribution would mean that, in principle, the procedural norms for international arbitration chosen by the parties would not clash with local law unless they infringe norms pertaining to the public policy – not clearly defined in Ecuador. Despite this lack of definition, we consider that norms such as those relating to the due process – to be specified below – would be included in this category;
- AML provisions for local proceedings are not necessarily applicable to international arbitration, except restrictedly to the assumptions set forth in this paper;
- Ecuador does not have a law on international arbitration that might limit the prerogatives of article 42 of the AML with respect to the arbitration proceeding; and
- substantive non-procedural provisions in the AML could be important and applicable to international arbitration in certain circumstances.

It is therefore necessary to outline such assumptions wherein Ecuadorian law could be applicable to international arbitration. In principle, local law is important when it operates as lex arbitri, namely, when it is the law of the place where the arbitration is conducted. Lex arbitri is fundamental for certain questions that could arise before, during and after arbitration, especially provisions that might be deemed imperative or pertaining to the public policy. Although not intending to provide a restrictive list of such questions, it is clear that the rules comprised in Ecuadorean law might include at least the following aspects:

- creation and effects of the arbitration agreement;
- subjective and objective arbitration;
- recusation and excuse of the arbitrators;
- Kompetenz-Kompetenz principle;
- rules on the due process;
- preventive measures;
- judicial assistance;
- formalities for issuing the arbitral award;
- actions and recourses against the award; and
- jurisdiction of the courts.

International commercial arbitration: definition and scope

The AML does not have any explicit definition for international arbitration. It only mentions the requirements for a proceeding to be considered as such. Article 41 sets forth two kinds of requirements: one is subjective and another is objective. In the former case, the parties must establish in their agreement that arbitration will be

international. In our opinion, this agreement does not have to be specific because the mere adoption of regulations or other set of rules regarding international arbitration ought to be interpreted as the parties' positive decision that arbitration must be international. In the latter case, it is necessary that the dispute be included at least within one of the following assumptions:

- if at the time of execution of the arbitration agreement the parties are domiciled in different states;
- if the place where a substantial portion of the obligations is to be performed or to which the issue under litigation is most closely related is situated outside the state in which at least one of the parties is domiciled; or
- if the issue being litigated relates to an international trade operation susceptible to compromise and not affecting or impairing national or collective interests.[15]

Characterising an arbitration proceeding as international is vitally important because by virtue thereof the parties may accede to the preeminence of the free-will principle set forth in the AML and mentioned in the preceding section as well as to international instruments regarding this issue executed and ratified by Ecuador.

Constitutional control of arbitration

Subsequent to the 2008 Constitution, a debate commenced in Ecuador on the possibility for judicial intervention in arbitration beyond the exceptional cases set out in the Arbitration and Mediation Law. In particular, the Constitution establishes the extraordinary action for protection.[16] This is a constitutional motion to revise final judgments where constitutional rights have been infringed. In other words, the constitutional motion is admissible against final decisions, thus endangering the res judicata effect that characterises arbitral awards.

It should be noted that the Constitutional Court has not yet resolved any of the actions for protection brought so far (directly against arbitral awards). There are arguments buttressing each side.[17] The Constitutional Court has rendered rulings[18] in arbitration related aspects that have so far been favourable for the development of arbitration in Ecuador, but there is a high risk that this court could start using constitutional protection to affect arbitration in Ecuador.

International arbitration and foreign investment protection

In the context of investment treaty arbitration, it must first be noted that Ecuador has withdrawn from the ICSID Convention. The announcement was made in July 2009 and the withdrawal became effective January 2010.[19] (For additional information on Ecuador's withdrawal from ICSID, please see the Ecuadorean chapter on international arbitration in 2011 edition of *The Arbitration Review of the Americas*.) Although this notice from Ecuador does not affect the consents provided for in contracts with ICSID dispute resolution clauses in BITs executed by Ecuador,[20] the message that Ecuador has sent to the world and to the parties to the ICSID Convention is clear: it does not like international arbitration.

Additionally, there is a strong political decision to withdraw from several bilateral investment treaties through which Ecuador gives its consent to international arbitration.[21]

Actually, the Constitutional Court has issued a series of decisions declaring that the dispute settlement provision of bilateral investment[22] (BITs) are unconstitutional (ie, the Ecuador-UK and Ecuador-Germany BITs and others). This is done as part of a major scheme to withdraw from those treaties because they are considered to be the illegitimate cession or waiver of sovereign powers; namely, the power of Ecuadorean courts to exercise their jurisdiction within the territory of Ecuador.

The Constitutional Court has issued the aforementioned decisions based on article 422 of the 2008 Constitution, which establishes in the relevant part:

> *It shall not be possible to enter into international treaties or instruments in which the Ecuadorean State waives sovereign jurisdiction to international arbitration venues in contractual or commercial disputes between the State and private individuals or corporations.*

The Constitutional Court does not seem to consider that article 422 establishes a prohibition to enter into new treaties; and such a prohibition is related to treaties in which Ecuador waives sovereignty in contractual and commercial disputes. Therefore, in our opinion, current treaties are not against the 2008 Constitution because the prohibition is for future treaties and does not apply to existing ones; and the prohibition refers to contractual and commercial disputes, while the BITs are generally related to investment disputes within the independent and separate discipline of international investment law.

In order to withdraw from the BITs, the Constitutional Court is declaring that the BITs are unconstitutional because they contain provisions that provide for international arbitration for the settlement of investment disputes with foreign investors, disregarding the jurisdiction of the domestic court system.

At the time of writing, the National Assembly International Law Committee has already issued internal reports suggesting the withdrawal of several BITs and has approved the withdrawal of a BIT executed with Finland.

It is important to say that, despite the fact that the Constitutional Court has approved the withdrawal of several BITs, the National Assembly has rejected the request of withdrawal of the BITs executed with China, the Netherlands and Germany. This initiative has been stopped and Ecuador has not pursued to finish this aggressive process of withdrawal of several BITs, and all the main treaties executed with the United States of America, United Kingdom, Spain and France remain in force.

Ecuador's initiative to submit disputes with foreign investors arising from specific contracts to international arbitration under UNCITRAL rules, having Santiago de Chile as the seat of arbitration remains unaltered. The attorney general has already approved this type or arbitral provision as required by the Constitution in several contracts.

Also, the recent Production Code approved by the government to reactivate the economy contains some interesting provisions on settlement of investment disputes. Article 27 of the approved Code establishes that conflicts that arise from an investment may be resolved through arbitration, but the arbitration clause must be included in an investment contract. The mandatory applicable law will be Ecuadorean and there is a mandatory mediation phase that needs to be exhausted before the arbitration commences. The arbitration agreement needs to meet some legal requirements in order to be valid, but it is quite evident that the government understands that there is a need for having disputes with foreign investors resolved through international arbitration. Special care will surely be needed when drafting these contracts.

It is also worth mentioning that Ecuador is a party to the World Trade Organization[23] and more than once it has applied state-to-state arbitration as set forth in WTO treaties.[24]

Pending cases against Ecuador

Presently, as we have learned, Ecuador has 13 pending international arbitration cases pertaining to investment.[25]

Enforcement of international arbitral awards in Ecuador

On 19 August 1961, Ecuador ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the 1958 New York Convention (NYC).[26] At the time of ratification, Ecuador submitted the reservation on reciprocity as allowed by article 1.3 of the NYC.[27] We still do not have any cases in Ecuador relating to enforcement of awards issued under the NYC,[28] however we have seen two cases of enforcement of private international commercial awards under the AML.

On 30 January 1975, the Inter-American Convention on International Commercial Arbitration, or Panama Convention (PC), entered into force and was ratified in 1978.[29] It is a second tool for enforcing foreign arbitral awards. The PC was executed by the Organization of American States (OAS) member countries and, therefore, its application is limited to arbitral awards pronounced in one of the OAS member countries that entered into the PC.[30] The PC applies to arbitral decisions resulting from disputes of a commercial character.[31] Article 4 of the PC provides that recognition and enforcement of arbitral awards that meet the requirements and limitations of the Convention must be recognised in the same manner as national or foreign judgments are recognised and enforced.[32]

On May 1982,[33] the 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, or the 1979 Montevideo Convention[34] (MC), came into effect in Ecuador. In addition to the coverage provided by the MC to judgments and awards pertaining to other matters, it also applies to enforcement of foreign arbitral awards relating to commercial issues. The MC, just as in the PC, only applies to judgments and awards issued in OAS member countries. The MC's intention is to cover judicial judgments and awards issued in civil, commercial or labour proceedings in one of the member states.[35]

As far as local norms are concerned, the LAM does not have a specific system for recognition and enforcement of foreign awards but, rather, it gives them the same treatment as the process for enforcing local judicial judgments passed in last instance. Article 42 of the LAM states that 'awards issued in an international arbitration proceeding shall have the same effects and shall be enforced in the same manner as awards issued in a national arbitration proceeding'. According to article 32 of the LAM, that procedure for enforcing arbitral awards will be the same as for enforcing local judgments passed in last instance; that is, through a judicial order. The LAM sets forth the judge's duty to recognise and enforce foreign awards through a judicial order, without the possibility of applying any other procedure.

Therefore, we believe that the LAM provides a mechanism that is more expeditious and direct than those provided in international conventions, which can be applied to international arbitration awards in Ecuador.

The judicial order procedure is commenced by the judge who allows a very short period of time for the debtor to pay what is due or otherwise to designate property for attachment and subsequent auction. This proceeding does not admit any opposition from the debtor, while the NYC does.[36] For this reason, the LAM presents an alternative that could be more expeditious to enforce awards before the lex fori. According to the foregoing, it can be argued that the exequatur procedure for enforcement of international arbitral awards is not necessary in Ecuador.

When analysing the law applicable to the enforcement of awards in Ecuador, a distinction should be drawn between awards rendered by ICSID tribunals and awards rendered by UNCITRAL or ICC tribunals.

Although Ecuador withdrew from the ICSID Convention effective in January 2010, there are still a few ICSID arbitrations ongoing and clauses in effect. Therefore, ICSID awards are binding and final for the contracting parties. Furthermore, the enforcement process provided for in the ICSID Convention remains effective for those cases and treaties in which Ecuador has given consent prior to the notice of withdrawal effective since January 2010.[37]

ICSID awards do not require an exequatur; that is, a judgment by a local court that a decision issued by a foreign judicial court or arbitration tribunal should be executed before local tribunals in order to be enforced because it does not contradict the Ecuadorean legal system. In other words, domestic courts are not entitled to review the awards rendered by ICSID tribunals, only to enforce them.

Hence, the enforcement of an ICSID award in Ecuador will be made as if it was a 'final judgment of a court in that state'.[38] Needless to say, an ICSID award entails crucial benefits for the investor: local courts are not empowered to revise the award; consequently, enforcement of ICSID awards may be more expeditious than enforcement of other international awards.

As regards the ICSID Convention, articles 53 and 54 have specific provisions that make it a special and unique self-contained system. Many practitioners choose ICSID based on these provisions, which are one of the most relevant improvements of the ICSID Convention regarding other arbitral organs and procedures. These provisions mandate that ICSID awards may only be reviewed under the rules of the ICSID Convention: the parties recognise the award and any contracting state enforces the pecuniary obligations awarded as if they were res judicata from any domestic tribunal. If that is not the case and a domestic court (for public order or constitutional reasons) allows a review, the award may be enforced in any other contracting state of the ICSID Convention and such enforcement may not be opposed by Ecuador. In other words, the fact that there is a domestic procedure aimed at reviewing the award does not pre-empt any other contracting state or its judiciary to grant the enforcement.[39]

Therefore, in Ecuador, an international award not protected by a specific treaty providing for its own enforcement mechanism (ie, the ICSID Convention) has to be enforced by applying the LAM and, thus, by filing the proper petition to the judiciary in an enforcement process,[40] in which the merits of the arbitration cannot be discussed or revised unless they contravene public policy and due process, as set forth in the Code of Civil Procedure[41] and the New York and Panama Conventions.[42] Once the international award has gone through the enforcement process without going through a review on the merits of the case, it is fully enforceable.

Since the current government took office, Ecuador has become one of the principal sponsors of an international political campaign that seeks to transform the current international dispute settlement for foreign investment disputes.[43] Furthermore, Ecuador is in favour of a Latin American self-contained dispute settlement mechanism, which is still under analysis.

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In 2012, Ecuador has seen a growth in cases that are being litigated in several international forums. Maybe one of the most important cases is the interstate claim brought by Ecuador against the United States of America seeking the interpretation of certain provision of the Ecuador-US BIT. Also, 2012 will see the ICSID award in the claim brought by Occidental Exploration and Production Company against Ecuador, the outcome of which will put the international arbitration system under scrutiny in Ecuador.

A favourable aspect is that Ecuador is still accepting all new contracts with foreign investors to international arbitration in Chile.

In the local arena, arbitrators and practitioners are still waiting for the developments as to whether there is room for a constitutional

revision of local arbitral awards. A negative aspect is that the new president of the Provincial Court of Quito has issued several rulings annulling local arbitral awards applying broad constitutional theories – this against several good precedents that were issued by the past president of this court.

We believe that these changes will lead arbitration and its users through complex and uncertain yet interesting times.

Notes

1 Official Register No. 449, 20 October 2008.

2 Article 190, Constitution: 'Arbitration, mediation and other alternative proceedings for dispute resolution are recognized. These proceedings shall be applied in accordance with the law on matters where, by reason of their nature, it is possible to compromise'.

3 It should be mentioned, however, that this recognition is not new since article 191 of the 1998 Constitution already included it with a similar language; it is, in fact, ratification of an existing principle.

4 Article 425, Constitution: 'The hierarchical order for the application of norms shall be as follows: The Constitution, international treaties and conventions, organic laws, ordinary laws, regional rules and district ordinances, decrees and regulations, ordinances, agreements and resolutions, and other acts and decisions of the public powers.'

5 Article 417, Constitution: 'International treaties ratified by Ecuador shall be subject to the provisions of the Constitution. In the case of treaties and other international instruments on human rights, the principles pro human being, no restriction of rights, direct applicability and open clause established in the Constitution shall apply.' This principle has been developed further in article 5 of the Organic Code for the Judiciary, which states that: 'The judges, administrative authorities and officials of the Judiciary shall directly apply constitutional norms and those set forth in international instruments on human rights if the latter are more favorable to those established in the Constitution, even if not expressly invoked by the parties.' Organic Code of the Judiciary, Official Register Supplement 544, 9 March 2009.

6 Official Register Supplement 1201, 20 August 1960.

7 Official Register 43, 29 December 1961. Ecuador ratified the New York Convention resorting to the commercial and reciprocity reservations set out in article I(3).

8 Official Register 386, 3 March 1986. Note that this Convention only pertains to disputes relating to investments between contracting states and nationals of other states, as specified in its provisions.

9 On 3 June 2009, the president of the Republic delivered a request to the Legislative and Auditing Committee of the National Assembly asking it to denounce the Washington Convention, claiming that it infringes the interests of Ecuador and violates article 422 of the Constitution. The request was considered by the National Assembly on 12 June 2009. Subsequently, the president of the Republic issued Executive Decree No. 1823 on 2 July 2009, where he resolved: '(1) To denounce and, therefore, to declare the termination of the Convention on Settlement of Investment Disputes ICSID …' Notice of the denunciation was served to ICSID on 6 July 2009.

10 Official Register 875, 14 February 1992.

11 Official Register 153, 25 November 2005.

12 Official Register 145, 4 September 1997. Codification was published in Official Register 417, 14 December 2006.

13 Official Register Supplement 46, 24 June 2005.

14 Article 37, AML: 'The provisions of the Civil Code, Code of Civil Procedure or Commercial Code and other related laws are supplementary and shall be applied on all matters not set forth in this Law, provided that arbitration at law is involved.' It is not possible to understand the objectives of the lawmaker's limitation because, in practice, supplementary norms also are – and should be – used in arbitration ex aequo et bono or in equity, especially if the Judiciary intervenes during any stage.

15 Article 41, AML. The terms 'if susceptible to compromise and not affecting or impairing national or collective interests' in the last assumption are the result of a hasty legal amendment in 2005 within the context of international arbitration claims that the Ecuadorian State was beginning to confront at that time. There is no case law providing clarity for its application. See such amendment in Law No. 2005-48, Official Register 532, 25 February 2005.

16 Article 94, Constitution.

17 Accordingly, in 2009 the Organic Code of the Judiciary was enacted. The Code – which is also an organic law – provides that arbitration is part of the state's bodies for the administration of justice and that arbitrators exercise jurisdictional duties. Thus, awards can misguidedly be considered equal to judicial rulings. See Organic Code of the Judiciary, article 17, which says: '[t]he administration of justice by the Judiciary is a public service, [...]. Arbitration, mediation and other alternative dispute resolution mechanisms established in the law constitute a form of public service, just like the duties relating to justice exercised by the authorities of indigenous peoples'.

18 In the *Misle* case, the Constitutional Court reviewed a decision taken by the Provincial Court regarding a nullity action of an arbitral award. In other words, the Court reviewed a pure judicial decision, but not the underlying arbitral award. See Constitutional Court of Justice, Judgment 06-10-SEP-CC of 24 February 2010.

19 Please visit the ICSID webpage at URL: http://icsid.worldbank.org/ICSID/, search for the 'News Releases' section and access the post dated 9 July 2009 titled 'Denunciation of the ICSID Convention by Ecuador'.

20 See article 25 (1) of the ICSID Convention.

21 President Correa's speech to Congress on 10 August 2009 contained a strong message against bilateral investment and commercial treaties. See a press article at: www.asambleanacional.gov.ec/20090810235/noticias/rotativo/discurso-del-presidente-de-la-republica-economista-rafael-correa.html.

22 See the article by Global Arbitration Review at the following URL: www.globalarbitrationreview.com/news/article/28642/ecuador-champing-bits/.

23 Protocol of Adhesion to the WTO, published in Official Register issue 852, dated 29 December 1995.

24 Ecuador has participated 15 times in the WTO Dispute Resolution System: three times as claimant, three times as defendant and nine times as a third party. See www.wto.org/spanish/thewto_s/countries_s/ecuadoir_s.htm#disputes.

25 Source: www.pge.gob.ec/es/patrocinio-internacional/arbitrajes-en-curso.html, last visit 22 August 2012.

26 Legislative Resolution published in Official Register issue 293, dated 19 August 1961.

27 Id. The Legislative Resolution establishes that Ecuador '[r]atifies the execution of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, taking into account that Ecuador, on the basis of reciprocity, will apply such Convention to recognition and enforcement of arbitral awards pronounced in the territory of another contracting state only when such awards involve litigations arising from juridical relations deemed to be commercial by Ecuadorean law.'

28 The final award in *Occidental Exploration and Production Company v Ecuador* (also known as *OXY 1*), was subject to a revision process under the NYC in London (lex arbitri). However, it was not examined under Ecuadorean law because the parties reached a compromise. Source: www.bittium-energy.com/cms/content/view/6944/1/.

29 Supreme Decree No. 3019, published in Official Register issue 729, dated 12 December 1978.
30 See articles 7 and 9.
31 Article 1 of the PC establishes that 'an agreement between the parties whereby they undertake to submit to arbitral decision the differences arising or having arisen between them with relation to a commercial business is valid. The respective agreement shall be included in a written document signed by the parties or in an exchange of letters, telegrams or telex communications'. See also declaration included in the ratification instrument dated 6 August 1991, published in Official Register No. 729, dated 12 December 1991, related to state-owned entities.
32 Article 4 of the PC provides that 'arbitral judgments or awards that cannot be challenged according to the law or applicable procedural rules shall have the force of res judicata. Their enforcement or recognition may be demanded in the same manner as judgments pronounced by national or foreign ordinary courts according to the procedural rules of the country where they are enforced and to what is established by international treaties in this respect'.
33 Executive Decree No. 853, published in the Official Register issue 240, dated 11 May 1982.
34 This convention was executed in Montevideo, Uruguay, on 8 May 1979. Source: http://untreaty.un.org/unts/60001_120000/22/28/00043359.pdf.
35 Article 1 of the MC establishes that '[t]his Convention shall apply to judicial judgments and arbitral awards issued in civil, commercial or labour proceedings in one of the member states unless at the time of ratification one of them has made an express reservation to limit it to judgments pertaining to convictions on equity matters. Likewise, any of them may declare, at the time of ratification, which it also applies to resolutions culminating the proceeding, those issued by authorities that exercise some jurisdictional function, and to criminal sentences as regards indemnities of damages deriving from the offense. The rules of this Convention shall apply as regards arbitral awards on everything not set forth in the Inter-American Convention on International Commercial Arbitration executed in Panama on January 30, 1975.'
35 See article 5 of the NYC.
37 See articles 25 (1) and 72 of the ICISID Convention. See also supra note 12. Ecuador withdrew from the ICSID Convention on 7July 2009 and such withdrawal became effective six months later (January 2010), as per the ICSID Convention. See http://icsid.worldbank.org/ICSID/.
38 Id.
39 Id.
40 Id.
41 See article 32 of the LAM. See also article 414 of the Code of Civil Procedure, codified through Law No. 2005-010, published in Official Register issue 46, dated 24 June 2005, which states: 'Foreign judgments shall be enforced if not contrary to Ecuadorean public law or any local law and if in keeping with international treaties and conventions as in force. In the absence of international treaties and conventions, in order for foreign judgments to be enforced not only shall they not contravene public law or Ecuador's local laws, but also the following shall be stated in the pertinent letters rogatory: a) that the judgment was passed as res judicata in accordance with the laws of the country where it was issued; and b) that judgment was passed in relation to a personal action.'
42 See Michael Reisman et al, International Commercial Arbitration, University Casebook Series, New York, 1997, at 691.
43 See press article at the following URL: www.hoy.com.ec/noticias-ecuador/ecuador-propondra-nuevo-sistema-de-arbitraje-durante-su-presidencia-en-unasur-357247.htm.

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Pérez Bustamante & Ponce resulted from the merger, effective in 2001, of two law firms providing complete services and having complementary philosophies: Pérez Bustamante y Pérez (which dates back to 1916 when it began to act professionally) and Fabián Ponce O & Asociados (founded in 1959).

Furthermore, our office combines the experience and prestige of several of the most reputed lawyers in Ecuador with the credit provided by young attorneys. Thus, our members have accumulated many years of experience in connection with the most important litigation and transactions carried out in and related to the Ecuadorean legal market, and have shared their knowledge and professional practice as university chairs and in seminars and lectures. Several members of Pérez, Bustamante & Ponce are or have been lecturers, experts, arbitrators or secretaries in arbitration tribunals.

Pérez, Bustamante & Ponce firmly believes in high-quality legal services, the importance of our clients' trust and confidence, the necessity of technological developments and the practice of law with an emphasis on internationalisation. Against this background, we belong to several international organisations: Lex Mundi, Club de Abogados and Interlaw.

The firm has recently participated in cases such as: an arbitration proceeding by MachalaPower Cia Ltda against the government of Ecuador before ICSID; two UNCITRAL proceedings by a multinational oil firm against the Republic of Ecuador; an ICSID arbitration process by a multinational US oil firm, based in the Midwest, on the basis of breach of contract and violation of the US–Ecuador BIT; and an ICSID arbitration case, filed on behalf a multinational oil firm against the Republic of Ecuador and the state-owned company Petroecuador, among others.

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Rodrigo Jijón is a partner and resident at Pérez Bustamante & Ponce Abogados, one of the leading law firms in Ecuador. He is actively involved in the fields of litigation, arbitration, and alternative dispute resolution.

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Mr Jijón presided over the arbitration tribunal in an ICSID arbitration case between IBM and Ecuador and has participated as litigating attorney in a large number of national and international arbitration proceedings. Likewise, Mr Jijón has acted as legal counsel to international corporations in several international arbitration proceedings.

He has served as professor of procedural law in several graduate and postgraduate universities in Ecuador. He has contributed numerous articles on procedural law and arbitration to different magazines in Ecuador and abroad, and is constantly participating as speaker in seminars and conferences on procedural law and arbitration.

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Juan Manuel Marchán is an associate at Pérez Bustamante & Ponce Abogados, one of the leading law firms in Ecuador. He is actively involved in the fields mergers and acquisitions, energy, international investment and commercial arbitration.

Mr Marchan has served as Chief of Staff of the Ministry of Oil and Mines of Ecuador. He is presently a professor of international arbitration and international law at San Francisco de Quito University and the Pontifical Catholic University of Ecuador, among others.

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Mr Marchan is member and current executive director of the Ecuadorean Arbitration Institute and a full member of the Ecuadorean Procedural Law Institute. He has also been a member of the Court of Honour of the Quito Bar Association.

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