The Arbitration Review of the Americas 2021

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The Arbitration Review of the Americas 2021

A Global Arbitration Review Special Report

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Account managers Marta Jurkowska and J'nea-Louise Wright

Production editor Kieran Redgewell
Chief subeditor Jonathan Allen
Subeditor Helen Smith
Head of content production Simon Busby
Editorial coordinator Hannah Higgins

Publisher David Samuels

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Global Arbitration Review
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL
United Kingdom
Tel: +44 20 3780 4134
Fax: +44 20 7229 6910
subscriptions@globalarbitrationreview.com

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Country chapters

Welcome to *The Arbitration Review of the Americas 2021*, one of *Global Arbitration Review*'s annual, yearbook-style reports.

Global Arbitration Review, for anyone unfamiliar, is the online home for international arbitration specialists everywhere, telling them all they need to know about everything that matters.

Throughout the year, *GAR* delivers pitch-perfect daily news, surveys and features, organises the liveliest events (under our GAR Live banner) and provides our readers with innovative tools and know-how products.

In addition, assisted by external contributors, we curate a series of regional reviews – online and in print – that go deeper into local developments than our journalistic output is able. *The Arbitration Review of the Americas*, which you are reading, is part of that series. It recaps the recent past and adds insight and thought-leadership from the pen of pre-eminent practitioners from around North and Latin America.

Across 18 chapters, and spanning 120 pages, this edition provides an invaluable retrospective, from 39 leading figures. All contributors are vetted for their standing and knowledge before being invited to take part. Together, our contributors capture and interpret the most substantial recent international arbitration events of the year just gone, supported by footnotes and relevant statistics. Other articles provide valuable background so that you can get up to speed quickly on the essentials of a particular country as a seat.

This edition covers Argentina, Bolivia, Canada, Ecuador, Mexico, Panama, Peru and the United States; has overviews on nascent Brazilian jurisprudence on arbitration and corruption (in the wake of Operation Carwash) and on the coronavirus and investment arbitration, among other things; and an update on how Mexico's federal courts are addressing the problem of personal injunctions against arbitrators that have brought Mexico grinding to a halt as a seat.

Among the other nuggets it contains:

- a discussion of the defences that states may lean on in public law to covid-19 claims. Are we on the verge of a *lex pandemiae* given the likely recurrence of certain questions?
- numerous real-life examples of coronavirus responses in the region that look ripe to found investment arbitration claims;
- extra questions that valuation experts need to ask when assessing a climate change-related loss;
- news that Bolivia may soon return to the investment arbitration fold;
- results of an (informal) survey on attitudes to mediation around Latin America, and whether the region 'needs' the Singapore Convention on Mediation (spoiler alert: not really); and
- a suggestion that the USMCA may not last much past the next round of North American elections, along with a forensic explanation of the changes it has introduced (and has not – for certain industries).

Plus much, much more. We hope you enjoy the review. If you have any suggestions for future editions, or want to take part in this annual project, my colleagues and I would love to hear from you. Please write to insight@globalarbitrationreview.com.

David Samuels
Publisher
July 2020

Ecuador

Rodrigo Jijón-Letort, Juan Manuel Marchán and Javier Jaramillo-Troya
Pérez Bustamante & Ponce

In summary

This chapter explains, generally, the Ecuadorian approach to international arbitration considering the main aspects of domestic law. Specifically, the chapter focuses on major Ecuadorian developments regarding actions taken by the government to foster foreign direct investment (FDI), including arbitration matters. This chapter includes a section devoted to Ecuador's history in investor-state arbitration and the law requirements for the state to execute an arbitration agreement. This chapter also shows recent legislation changes seeking to eliminate recognition or exequatur proceedings for foreign arbitral awards, allowing direct enforcement. Finally, the chapter shows Ecuador's pro-arbitration developments regarding annulment arbitral awards due to recent decisions by the Constitutional Court limiting the threshold of the grounds for annulment.

Discussion points

- Ecuadorian approach to international arbitration.
- Ecuador actions to foster FDI, including arbitration matters.
- Ecuador as party to international arbitration (active cases, requirements to execute an arbitration agreement and history of compliance with awards).
- Direct enforcement of arbitral awards without the need of a recognition or exequatur phase.
- Limitations to the annulment action by Ecuador's Constitutional Court.

Referenced in this article

- Arbitration and Mediation Law of Ecuador.
- Constitution of the Republic of Ecuador.
- FDI.
- Attorney General's Office of Ecuador.
- Constitutional Court of Ecuador.
- Recognition or exequatur process.
- EU-Peru-Colombia Free Trade Agreement.
- Ecuador-Brazil Bilateral Investment Treaty.
- Law to Incentivise Production and Investments (LIPI).

Arbitration and mediation law: guidelines for applicability

Arbitration in Ecuador is regulated by the Arbitration and Mediation Law of 1997 (AML)[1]. The AML is an UNCITRAL-oriented body of norms. Additionally, pursuant to the AML, other bodies of law, such as the General Organic Code of Procedures, the Organic Code for the Judiciary and the Civil Code,[2] may be supplementary to it.[3]

The AML, applicable in domestic arbitration or as *lex arbitri* – namely, when it is the law chosen by the parties to govern the arbitration or, in its absence, as the law of the place where the arbitration has its seat – provides for certain basic principles, which include at least the following aspects:

- validity requirements of the arbitration agreement;
- challenge and excuse of the arbitrators;
- competence-competence principle;
- severability principle;
- *favor arbitralis* principle;
- due process rules;
- provisional measures (under the AML if parties agree, arbitral tribunals can directly order and seek assistance of public authorities to enforce provisional measures without recourse to local courts);
- judicial assistance;
- formalities for issuing the arbitral award;
- actions and recourses against the award; and
- jurisdiction of the courts.

Arbitration in public contracts.

Pursuant to the Ecuadorian Constitution (the Constitution)and the AML, for an arbitration agreement included in a public contract to be valid, the public entity must seek prior authorisation by the Attorney General's Office. The Ecuadorian National Court has ruled that absent authorisation, the arbitration agreement is valid. Ecuadorian law also requires prior authorisation by the Attorney General's Office for a public entity to agree on foreign legislation as substantive applicable law for the public contract.

International arbitration: definition and scope

The AML does not have an 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: subjective and objective. In the former case, the parties must establish in their agreement that the arbitration will be international. In our opinion, this agreement does not have to be explicit – the mere adoption of foreign laws, regulations or other set of rules regarding international arbitration ought to be interpreted as the parties' positive decision that the arbitration is international. In the latter case, it is necessary that the dispute be included within at least 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.[4]

Characterising an arbitration proceeding as international is vitally important because the parties may accede to the pre-eminence 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.

The AML provides for a dualist regime comprising detailed rules governing local arbitration and a few – albeit determinant – rules on international arbitration.

As regards 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.*

The above provision sets forth the principle of pre-eminence of party autonomy in matters of international arbitration on the basis of which the procedural rules can be freely agreed by the parties, resulting in important consequences including the following:

- Parties may elect the rules to govern an ad hoc or institutional arbitration proceeding. 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 public policy – not clearly defined in Ecuador. Despite this lack of definition, we consider that norms such as those relating to the due process (specified below) and other constitutional rights would be included in this category.
- AML provisions for local proceedings are not necessarily applicable to international arbitration, except strictly to the assumptions described in this chapter.
- Ecuador does not have a law on international arbitration that might limit the prerogatives of article 42 of the AML with respect to an arbitration proceeding.
- Substantive non-procedural provisions in the AML could be important and applicable to international arbitration in certain circumstances.

International convention

According to Ecuador's legal system, international law is subordinated to the Constitution and prevails over and above any other domestic laws,[5] except with respect to human rights and *ius cogens* provisions where international instruments may prevail over the Constitution if they stipulate more favourable rights to persons.[6]

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

- the 1928 Havana Convention on Private International Law;[7]
- the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention);[8]
- the 1966 International Convention on Settlement of Investment Disputes between States and Nationals of other States (the Washington Convention)[9] (denounced in 2009);[10]
- the 1975 Inter-American Convention on International Commercial Arbitration (the Panama Convention);[11] and
- the 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.[12]

International arbitration and foreign investment protection

Ecuador's former president, as one of his last actions in office, concluded the bilateral investment treaty (BIT) denunciation process initiated in 2008. Denunciation was based on the idea that dispute resolution clauses included in the BITs violate article 422 of the Constitution, which provides:

> *Treaties or international instruments where the Ecuadorian State yields its sovereign jurisdiction to international arbitration, in contractual or commercial disputes, between the State and natural persons or legal entities cannot be entered into.*

Currently, investors conducting investments prior to a BIT's effective termination date are still protected under each BIT sunset clause. In other cases, BITs are still in force pursuant to its provisions regarding effective termination

However, in 2019, Ecuador's National Assembly filed an interpretation petition regarding article 422 of the Constitution before the Constitutional Court, seeking the court to declare: that said article is not applicable to BITs as they do not include arbitration agreements for settlement of contractual or commercial disputes; and, additionally BIT executions by Ecuador do not entail a 'waiver of sovereign jurisdiction'.

Actions to foster foreign investment

Since President Moreno took office, certain actions suggest the Ecuadorian government has excluded the trend set forth by former President Correa.

These actions include:

- joining the EU-Perú-Colombia Free Trade Agreement in 2018;
- executing a bilateral investment agreement with Brazil in late 2019;
- starting negotiations with certain countries so as to conclude a BIT; and
- enacting the Law to Incentivise Production and Investments (LIPI), with the goal of fostering foreign investment.

LIPI amended certain provisions of the Organic Production and Investment Code, which regulates investment contracts. It establishes that all investment contracts must include arbitration agreements that provide for national or international arbitration procedures in law for the resolution of disputes. In this sense, and unlike other provisions related to arbitration in contracts of a public nature that establish the possibility, under the word 'may', of the parties to agree arbitration as a method of resolution of contractual disputes, LIPI establishes, in an imperative manner, under the word 'shall', the obligation of the parties to agree on national or international arbitration as a method of resolution of disputes under investment contracts.

LIPI does not make any reference to the seat of arbitration within international arbitration proceedings; therefore, this must be agreed by the parties in each case. In the case of investment contracts exceeding US$10 million, LIPI mandates that the arbitration agreement contains the possibility of the claimant, as its sole option, to opt for an arbitration procedure regulated by, 'among others':

- the UNCITRAL Arbitration Rules;
- the Arbitration Rules of the International Chamber of Commerce; and
- the Rules of Procedure of the Inter-American Commercial Arbitration Commission.

The words 'among others' open the possibility for the arbitration agreement to allow the claimant to agree on a different set of arbitration rules, such as the Arbitration Rules of the London Court of International Arbitration. However, LIPI makes it clear that in no case will the rules of emergency arbitration apply.

Ecuador and international arbitration

According to the latest statement, Ecuador has 36 active international proceedings as reported by the Attorney General's Office.[13]

Ecuador has complied voluntarily with all awards issued against it.[14]

As of the total of publicly available awards,[15] Ecuador has been found liable in 55 per cent of them, and not liable in 22.5 per cent of the total known cases. 22.5 per cent of all total known awards were either discontinued or a settlement was reached. In 60 per cent of all awards in which Ecuador has been found liable, the award also includes the payment of costs in favour of the investor.[16]

In our opinion, Ecuador as a matter of public policy, complies with international arbitration awards – both investment-treaty and commercial and contractual – without the need of private parties to forcibly enforce them before Ecuadorian courts. The only case we know where a private party started local enforcement proceedings to enforce an arbitral award was in the *Chevron II* case. However, after enforcement proceedings started, Ecuador decided to comply with the award.

In our view, this situation has to do with Ecuador's intent to show itself as a compliant state, considering the adverse effects a 'defaulting state' status might generate regarding the emission of public bonds or tariff benefits.

In this sense, an American company initiated proceedings before the United States Trade Representative seeking the US government to limit Ecuador's tariff benefits[17] arguing non-compliance with the *Chevron III* award on merits. Among others, Ecuador argued an exemplary record regarding compliance with international arbitral awards by stating: 'Ecuador's conduct demonstrates that it has never failed to comply with a final award'.

Enforcement of international arbitral awards in Ecuador

The rules for recognising and enforcing international arbitration awards were set out in the General Organic Code of Procedures (GOCP).

Under GOCP provisions, before a foreign award's enforcement, it must be subject to a recognition process or exequatur, which is a declaration by which the award is given the same status as a national judgment.

Unlike the New York Convention, the exequatur process puts the burden of proof on the petitioner, which must demonstrate that:

- the award complies with all the formalities required by the state in which it was rendered;
- the award is final and has a *res iudicata* effect under the law it was rendered;
- the documentation attached is translated (if applicable);
- the due process rights of the parties were met; and
- the request indicates the domicile of the respondent for service of process purposes.

If the arbitral award was rendered against the state, the petitioner must also demonstrate that the award does not contravene any constitutional, treaty, or legal provision.

Once the competent court decided favourably on the recognition, the petitioner must file an enforcement petition before the correspondent trial judge according to the procedure indicated for domestic awards.

Recently, the Ecuadorian Assembly enacted LIPI, which amended all the mentioned provisions about recognition and enforcement of foreign awards and judgments, eliminating the words 'arbitral award' in all of them. In this way, LIPI made the recognition and enforcement procedure set out in the GOCP inapplicable for foreign arbitral awards

Additionally, LIPI reinstated the last paragraph of article 42 of the Ecuadorian Arbitration and Mediation Law, which provided that the enforcement procedure for international awards would be the same as the one for domestic awards. This article was repealed in May 2015 with the promulgation of the GOCP rules mentioned above and has since been brought back into force.

Therefore, as a matter of Ecuadorian law, an award rendered under by an international arbitration tribunal will be directly enforced by means of the executive process established under the GOCP without the need for a previous recognition phase.

This is consistent with article 7 of the New York Convention, under which local provisions are applicable in cases where the result is more favourable than the Convention itself.

Although certain local courts have unlawfully misapplied article 42 provisions requiring a recognition phase, we believe said provisions to be clear enough and in accordance with LIPI's intent.

Annulment actions

In 2018, the development of arbitral proceedings was disturbed by a series of decisions by the annulment courts, especially in cases against state entities related to public contracts.

The annulment courts breached the *ultima ratio* character behind the actions to set aside an arbitration award by means an overreaching construction of causes brought by the AML for an award to be set aside, as well as considering different causes not expressly provided under the AML.

For example, the annulment courts have reviewed, without legal faculty, the tribunal's decision on jurisdiction as well as the motivation behind the award. In line with this, the annulment courts have ruled administrative acts (eg, unilateral termination of contracts), although produced in a public contract containing an arbitration agreement, not to be arbitrable under Ecuadorian law. These decisions expressly contravene the Ecuadorian Constitution, which allows arbitration in public contracts.

Fortunately, in late 2019, the Constitutional Court rendered two decisions favourable to arbitration, that held that: annulment actions are *ultima ratio* and must respect the minimal intervention principle; the setting aside causes are limited to the ones set forth in the AML as a close list; and lack of jurisdiction and motivation are not annulment causes set forth in the AML, and, therefore, cannot be subject to review by annulment courts.

Notes

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

2 The Organic Code of Procedures was recently published on 22 May 2015.

3 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.

4 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.

5 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.'

6 Article 417 of the 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 favourable 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.

7 Official Register Supplement 1201, 20 August 1960.

8 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).

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

10 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: '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.

11 Official Register 875, 14 February 1992.

12 Official Register 153, 25 November 2005.

13 See http://www.pge.gob.ec/images/2020/PROFIP_2020/PRESENTACION_02032020.pdf.

14 *Getting the Deal Through: Investment Treaty Arbitration*: Ecuador (Annex 14) .

15 *Corporación Quiport S.A. and others v Republic of Ecuador* (ICSID Case No. ARB/09/23); *Repsol YPF Ecuador, S.A. and others v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador* (PetroEcuador), (ICSID Case No. ARB/08/10); *Repsol YPF Ecuador S.A. v Empresa Estatal Petróleos del Ecuador (Petroecuador)* (ICSID Case No. ARB/01/10); *Murphy Exploration and Production Company International v Republic of Ecuador* (ICSID Case No. ARB/08/4); *City Oriente Limited v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)* (ICSID Case No. ARB/06/21); *Técnicas Reunidas, S.A. and Eurocontrol, S.A. v Republic of Ecuador* (ICSID Case No. ARB/06/17); *Occidental Petroleum Corporation and Occidental Exploration and Production Company v Republic of Ecuador* (ICSID Case No. ARB/06/11); *Occidental Petroleum Corporation and Occidental Exploration and Production Company v Republic of Ecuador* (ICSID Case No. ARB/06/11) Anulment proceedings; *Noble Energy Inc. and MachalaPower Cía. Ltd. v Republic of Ecuador and Consejo Nacional de Electricidad* (ICSID Case No. ARB/05/12); *Empresa Eléctrica del Ecuador, Inc. (EMELEC) v Republic of Ecuador* (ICSID Case No. ARB/05/9); *Duke Energy Electroquil Partners and Electroquil S.A. v Republic of Ecuador* (ICSID Case No. ARB/04/19); *M.C.I. Power Group, L.C. and New Turbine, Inc. v. Republic of Ecuador* (ICSID Case No. ARB/03/6); *M.C.I. Power Group, L.C. and New Turbine, Inc. v Republic of Ecuador* (ICSID Case No. ARB/03/6) annulment proceedings; *IBM World Trade Corp. v Republic of Ecuador* (ICSID Case No. ARB/02/10); *Burlington Resources Inc. v Republic of Ecuador*, ICSID Case No. ARB/08/5 (formerly *Burlington Resources Inc. and others v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador)*; *Burlington Resources Inc. v Republic of Ecuador*, ICSID Case No. ARB/08/5), *Occidental Exploration and Production Company v The Republic of Ecuador*, LCIA Case No. UN3467 *Perenco Ecuador Ltd. v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/08/6 *Merck Sharpe & Dohme (I.A.) LLC v The Republic of Ecuador* (PCA Case 2012-10), *1. Chevron Corporation and 2. Texaco Petroleum Company v The Republic of Ecuador* (PCA Case 2009-23), *Albacora, S.A. v La República del Ecuador* (PCA Case 2016-11), *1. EcuadorTLC S.A. (Ecuador) 2. Cayman International Exploration Company S.A. (Panamá) 3. Teikoku Oil Ecuador (Islas Caimán) c. 1. República del Ecuador 2. Secretaría de Hidrocarburos del Ecuador 3. Empresa Pública de Hidrocarburos del Ecuador EP Petroecu* (PCA Case 2014-32), *Murphy Exploration & Production Company - International v. The Republic of Ecuador* (PCA Case 2012-316), *Copper Mesa Mining Corporation (Canada) v The Republic of Ecuador* (PCA Case 2012-02), *1. Chevron Corporation and 2. Texaco Petroleum Company v The Republic of Ecuador* (PCA Case 2007-02/AA277), *Globalnet - Únete Telecomunicaciones S.A. and Clay Pacific S.R.L. v The Republic of Ecuador* (UNCITRAL), *EnCana Corporation v Republic of Ecuador*, (LCIA Case No. UN3481, UNCITRAL (formerly EnCana Corporation v Government of the Republic of Ecuador)), *Ulysseas, Inc. v The Republic of Ecuador*, (UNCITRAL).

16 *Burlington Resources Inc. v Republic of Ecuador*, ICSID Case No. ARB/08/5 (formerly *Burlington Resources Inc. and others v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador)*, in which the investor was awarded 65 per cent of the costs; *M.C.I. Power Group, L.C. and New Turbine, Inc. v Republic* of Ecuador (ICSID Case No. ARB/03/6) Annulment Proceedings, investor awarded 100% of the costs; and *Repsol YPF Ecuador S.A. v Empresa Estatal Petróleos del Ecuador (Petroecuador)* (ICSID Case No. ARB/01/10), Annulment Proceedings, investor awarded 100 per cent of the costs.

17 https://www.regulations.gov/docket?D=USTR-2013-0013.

Rodrigo Jijón-Letort
Pérez Bustamante & Ponce

Rodrigo Jijón is the team leader of Pérez Bustamante & Ponce (PBP) dispute resolution practice; he is also president of the firm.

Rodrigo is an expert with more than 40 years of experience in international and local litigation and arbitration. Rodrigo has participated in the most important cases throughout Ecuadorian history, including the defence of a major energy company battling a fraudulent multibillion-dollar judgment in Ecuador and related foreign judgment enforcement proceedings as well as submitting arguments before the Supreme Court in the most complex cases. Rodrigo is a ruthless litigator and one of the best negotiators in the country. He is regarded as an expert in setting forth strategies that allow for the best resolution of a conflict, whether through mediation or judicial or arbitration channels. His practice has been recognised by *Chambers and Partners* (Global and Latam), *Latin Lawyer*, *The Legal 500*, *LACCA* and *GAR's Who's Who Legal* as a top-tier attorney, including a recognition as a Star Individual.

Rodrigo earned his law degree from Pontificia Universidad Católica del Ecuador and holds an LLM from Tulane Law School.

Rodrigo lectures on civil procedure and judicial proceedings in Universidad San Francisco de Quito's undergraduate programme as well as introduction to arbitration in USFQ's LLM programme in international litigation and arbitration.

He also serves as arbitrator for the arbitration centres of the Quito and Guayaquil Chambers of Commerce as well as the Ecuadorian American Chamber of Commerce in Quito. He has also served as an ICSID and ICC arbitrator in several international arbitration panels. Rodrigo is a founding member and former president of the Ecuadorian Arbitration Institute and a former vice-dean of the law faculty of the Pontificia Universidad Católica del Ecuador.

Juan Manuel Marchán
Pérez Bustamante & Ponce

Juan Manuel Marchán has been a partner at the firm since 2013, the youngest attorney to be promoted to such a position, and head of the domestic and international arbitration unit. Before joining PBP, Juan Manuel worked as an intern at the ICC International Court of Arbitration in Paris, France. He also served as private secretary to the Minister of Mining and Oil and as head of the Minister's Office.

Juan Manuel is an expert in international and local arbitration. He was part of the team when the big wave of investment-treaty arbitrations against Ecuador started and advised several clients in the infrastructure, oil and gas, and electricity industries. Juan Manuel has also participated in several commercial arbitration proceedings under ICC and UNCITRAL rules. Since then, Juan Manuel has been the person behind the strategy in the international arbitration team at PBP. His practice has been recognised by *Chambers and Partners* (Global and Latam), *Latin Lawyer*, *The Legal 500*, *LACCA* and *GAR's Who's Who Legal*.

Juan Manuel obtained his law degree from Pontificia Universidad Católica del Ecuador where he was the president of the Law School Association. He also holds an LLM from Columbia Law School.

Juan Manuel serves as arbitrator at the Arbitration Centres of the Quito and Guayaquil Chambers of Commerce and the Ecuadorian American Chamber of Commerce in Quito. He has also sat as an arbitrator in ICC arbitration proceedings. Juan Manuel is a founding member and vice president of the Ecuadorian Arbitration Institute.

PÉREZ BUSTAMANTE & PONCE PBP

Av. República de El Salvador No. 36-140
Edif. Mansión Blanca, Piso 9
Quito
Ecuador
Tel: +593 2 400 7800
Fax: +593 2 225 8038

Rodrigo Jijón-Letort
rjijon@pbplaw.com

Juan Manuel Marchán
jmarchan@pbplaw.com

Javier Jaramillo-Troya
jjaramillo@pbplaw.com

www.pbplaw.com

PBP is the largest firm in Ecuador, considered a leader in the legal market and a trusted adviser for national and international clients. It has offices in Quito and Guayaquil, and outreach throughout Ecuador.

PBP endeavours to understand clients' challenges and needs. Its multi-practice teams – integrating expertise in 13 practice areas and nine industries – have an in-depth understanding of the specific challenges of each sector.

PBP's team has both local and international experience. Several members have attended renowned local and international universities and have worked at first-rate law firms around the world. Furthermore, a number of its attorneys have been admitted to practise in the State of New York, District of Columbia, Spain, Chile, Colombia and other jurisdictions.

PBP has consistently been honoured as Ecuadorian Firm of the Year by *Chambers Latin America* (2019, 2018, 2017, 2016, 2015, 2014, 2013, 2011, 2010 and 2009) and by *Who's Who Legal* (2020, 2019, 2018, 2017, 2016, 2014, 2013, 2012, 2011 and 2010).

Social responsibility is a part of its professional culture. Through the Fabián Ponce O Foundation, founded in 1987, the firm encourages and optimises its social responsibility work. It represents fair causes with an emphasis on family law.

PBP strives to be an increasingly inclusive firm and endeavours to promote the leadership and professional development of women.

Javier Jaramillo-Troya
Pérez Bustamante & Ponce

Javier is a dual-qualified attorney in Ecuador and New York. He is a senior associate in PBP's dispute resolution unit. Before joining the firm, Javier served as an international lawyer at Latham & Watkins' International Arbitration Unit, at the Paris office.

Javier's practice focuses on international and domestic arbitration, as well as complex civil, commercial, tort and administrative litigations. His knowledge and experience make him the go-to associate in arbitration matters. His practice has been recognised by *Chambers and Partners* (Global and Latam) and *GAR's Who's Who Legal*.

Javier obtained his law degree summa cum laude from Universidad San Francisco de Quito where he was valedictorian of his class. He holds an LLM from Harvard Law School where he was recognised with the Dean's Scholar Award in International Arbitration. He also holds an LLM in alternative dispute resolution from Universidad Andina Simón Bolívar where he was valedictorian of his class.

Currently, he serves as Professor of Law in Oral Advocacy, Torts and Arbitration at Universidad San Francisco de Quito's undergraduate programme where he also lectures on international commercial arbitration in the LLM in international litigation and arbitration.

He serves as arbitral secretary of the arbitration centres of the Quito, Ecuadorian American Industries and Production Chambers. Javier is also co-director of the *Ecuadorian Arbitration Review* and ambassador for arbitrator intelligence

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