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Ecuador

INTERNATIONAL ARBITRATION

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Ecuador.

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ECUADOR
INTERNATIONAL ARBITRATION

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

In Ecuador, arbitration is regulated by the Arbitration and Mediation Law ("*Ley de Arbitraje y Mediación*") ("LAM"), in force since 1997, which was partially modified in 2005, 2015 and 2017; and its recently enacted Regulations ("*Reglamento a la Ley de Arbitraje y Mediación*"). The LAM regulates local and international arbitration. Moreover, we must mention that arbitration has constitutional recognition since its inclusion in the 1998 Political Constitution of Ecuador, and later, in the Constitution of the Republic of Ecuador of 2008 ("Constitution").

The only law that regulates arbitration, and is therefore of mandatory compliance, is the LAM. However, the General Organic Process Code ("COGEP"), and now the Regulations to the LAM, regulate award enforcement processes. The COGEP may also be applied to arbitration processes in a supplementary manner. Furthermore, each Arbitration and Mediation Chamber has internal regulations which may be applicable to the cases brought before such centers, to the election of the Parties.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes, Ecuador is a party to the New York Convention ("NYC"), which is in force in our jurisdiction since 1962.

Ecuador made the following reservations to the NYC: a) application only to the recognition and enforcement of awards issued by countries subscribed to the NYC; and b) application to awards derived from legal relations, contractual or not, considered commercial, according to the local legislation.

3. What other arbitration-related treaties and conventions is your country a party to?

Ecuador is a party to the following arbitration-related treaties and conventions:

- The 1928 Havana Convention on Private International Law
- The 1958 United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (NYC)
- The 1975 Inter-American Convention on International Commercial Arbitration (Panama Convention), in force since 1991; and
- The 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

As mentioned, international arbitration is also regulated by the LAM, which regulates both national and international arbitration.

The LAM was originally inspired in the UNCITRAL Model Law; however, several changes were introduced in the version that came into force (which is why the LAM considerably differs from the Model Law). When referring to international arbitration, the LAM has significant differences to the Model Law, this, since the LAM only has two articles regulating international arbitration. These provide that any person and the State can submit to international arbitration if the conditions set out in Art. 41 are complied with, and that the arbitration proceedings may be regulated by international treaties, international instruments or by the laws of the site of the arbitration, including Ecuador.

Notwithstanding these favorable rules, the Constitution introduced a State-level prohibition to agree on international arbitration in case of "*execution of*

international treaties or instruments in which the Ecuadorian State gives up sovereign jurisdiction in favor of international arbitration, in contractual or commercial controversies between the State and private persons or companies", except in the case of those international instruments "*that establish the solution of disputes between States and citizens in Latin America by regional arbitration instances*". Currently, this constitutional provision is subject to an action of constitutional review by the Constitutional Court.

5. Are there any impending plans to reform the arbitration laws in your country?

There are none. Through the years, there have been certain initiatives to reform the LAM; however, none of those have been taken seriously by Ecuadorian legislators, leaving these to academic discussion forums. Furthermore, the Regulations to the LAM were recently enacted by the Ecuadorian President on August 18th, 2021.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

Ecuador has several arbitration centers with great reputation and experience, among these, the Arbitration and Mediation Center of the Chamber of Commerce of Quito, Arbitration and Mediation Center of the Ecuadorian American Chamber of Commerce in Quito and the Arbitration and Mediation Center of the Chamber of Commerce of Guayaquil.

The regulations of these centers are constantly updated with the latest arbitration trends. For example, the Regulations of the Arbitration and Mediation Center of the Chamber of Commerce of Guayaquil have recently included the mission record, among others. However, issues like third party funding or soft law application are not yet regulated by them.

Since the arbitration centers are continuously discussing the introduction of amendments to their regulations, some changes may be announced soon. In this sense, the most recent amendments were introduced due to the COVID-19 pandemic.

The most important arbitration centers in the country have reformed their regulations with the aim of implementing virtual processes, such as, the submission of digital documents, virtual hearings, and the acceptance of electronically signed documents, among others.

7. Is there a specialist arbitration court in your country?

No, there is none.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

Arbitration agreements are considered as contracts (Art. 1454 Civil Code) and for this reason they must comply with the general requirements of contracts (consent, legal capacity, lawful purpose, and cause) (Art. 1461 Civil Code).

In addition to the above, according to Art. 1 of the LAM, the first validity requirement of the arbitration agreement is that all controversies to be solved through the arbitration process must be subject to transaction. The second requirement is that the arbitration agreement must be in writing (Art. 5). In this sense, it is considered that an arbitration agreement exists not only if it is in a written document signed by the parties, but also when it is the result of an exchange of letters or any other written communication that records the will of the parties to submit themselves to arbitration (Art. 7), which could include emails or other written document, even if they are not signed by the parties.

9. Are arbitration clauses considered separable from the main contract?

Yes, according with the third paragraph of Art. 5 the LAM, the annulment of the contract shall not affect the validity of the arbitration agreement.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

To the best of our knowledge, the validation principle has not been applied in Ecuador by any court.

11. Is there anything particular to note in

your jurisdiction with regard to multi-party or multi-contract arbitration?

No, the LAM does not have any specific provision on this matter. However, we must mention that not because of this, multi-party or multi-contract arbitrations are impossible or forbidden in our jurisdiction, rather, they could be treated according to the general rules of supplementary application.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

In Ecuador there are no law-level norms related to non-signatory parties. However, several tribunals, in application of the non-signatory parties' doctrine, have allowed the participation of non-signatory parties as actors or defendants; likewise, tribunals have allowed the participation of third parties not linked to the arbitration agreement in said processes.

To the best of our knowledge, there are no local court decisions regarding this topic.

Notwithstanding the above, the recently enacted Regulations to the LAM (which have a lower rank than a law) have introduced certain provisions related to the participation of non-signatory parties in the arbitration process. According to Art. 6, *"In addition to the cases specified in the law, the effects of the arbitration agreement reach: 1. To those whose consent to submit to arbitration is derived, according to the precepts of good faith, from their active and decisive participation in the negotiation, execution, performance or termination of the legal business that comprises the arbitration agreement or to which the agreement is related. 2. To those who intend to derive rights or benefits from the legal business, according to its terms, such as successors, assignees, among others. 3. To the bodies of the administrations originating the administrative acts".*

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

Yes, in application of Art. 1 of the LAM, all matters that cannot be subject to transaction cannot be submitted to arbitration. These are: civil status, almost all criminal matters, tax and, in general, those considered as matters of public order.

One of the recent developments on this issue was introduced by the Regulations to the LAM, which cleared the doubt that existed regarding the arbitrability of administrative acts, providing that *"If the State or a public sector entity had agreed to arbitration, The arbitrators will have exclusive competence to resolve any dispute about the facts, acts or other administrative actions that are related or arise on the occasion of the legal relationship submitted to their knowledge, including the acts of termination, caducity (*"caducidad"*), or sanctions issued within the framework of the contractual legal relationship, regardless of the administrative body that issues them." (*Article 4.3 of the cited norm).

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

To the best of our knowledge, there has not been any evolution in this regard in recent years.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The applicable law to the controversy is determined by the parties in the arbitration agreement or the contract. In absence of this, and if it is a local contract, Ecuadorian law will apply. If the controversy arises from an international business, the parties may agree that the arbitration has an international nature and so, the applicable law would also be agreed by them. If the contract does not provide anything in this regard, and there is no agreement between the parties, the arbitrators shall decide.

Although there are no specific "choice of law" rules in Ecuador, Art. 7, number 18 of the national Civil Code provides that all the rules that are in force at the time of the signing of the contract are understood as incorporated to such contract. Thus, if the contract was entered into in Ecuador, all laws in force at such time shall be included to the contract and the governing law would be Ecuadorian. Additionally, the Private International Law Code also known as the "Sanchez Bustamante Code", is in force in Ecuador since 1928.

16. Have the courts in your country applied the UNIDROIT or any other transnational

principles as the substantive law? If so, in what circumstances have such principles been applied?

Not to the best of our knowledge.

17. In your country, are there any restrictions in the appointment of arbitrators?

Art. 19 of the LAM states that individuals with no capacity to appear by themselves in trial cannot be an arbitrator. Also, in accordance with Art. 3 of the LAM, in all *de jure* arbitration processes, arbitrators must be lawyers.

18. Are there any default requirements as to the selection of a tribunal?

Art. 19 of the LAM states that individuals with no capacity to appear by themselves in trial cannot be an arbitrator. Also, in accordance with Art. 3 of the LAM, in all *de jure* arbitration processes, arbitrators must be lawyers.

19. Can the local courts intervene in the selection of arbitrators? If so, how?

No. The LAM does not provide requirements for the selection of a tribunal. In accordance with Art. 16 of the LAM, the parties have absolute freedom to appoint arbitrators, who may be on the center's arbitrators list or not.

20. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

No. Local courts cannot intervene in the selection of arbitrators. According to Art. 16 of the LAM, when the parties have not agreed on the appointment of the arbitrators, the director of the arbitration center selected by the parties, or the director of the nearest arbitration center, if the parties have not selected any, shall select the arbitrators.

21. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators

According to Art. 21 of the LAM, arbitrators can challenge their appointment. The grounds for the challenge of arbitrators are the same ones stated in the COGEP for judges. Art. 22 of the COGEP provides the following grounds for challenge:

1. To be a party in the process.
2. To be spouse or have a common-law partner with one of the parties or their defenders.
3. To be a relative up to the fourth degree of consanguinity or second of affinity of any of the parties, their legal representative, agent, attorney, defender, or of the judge who issued the challenged ruling.
4. To have ruled in another instance in the same process the issue or another related with it.
5. Unreasonably delay the dispatch of matters submitted to its jurisdiction. If it is the ruling of the matter, the provisions of the Organic Code of the Judicial Branch will be followed.
6. Having been a legal representative, agent, attorney, defender, agent of one of the parties in the process currently submitted to its knowledge or intervened as a mediator.
7. To have expressed opinion or advice that is demonstrable, about the process that comes to it knowledge.
8. To have, or had have, he, his spouse, his common-law partner, or any of his relatives until the fourth degree of consanguinity or second of affinity a process with any of the parties; when the process has been initiated by one of the parties, it must have been before the instance in which the challenge is attempted.
9. To have received rights, contributions, goods, or services from one of the parties.
10. To have any pending obligations with any of the parties or their defenders.
11. To have with one of the parties or their defenders, intimate friendship, or manifest enmity.
12. To have a personal interest in the process because it is their business or their spouse or common-law partner, or their relatives within the fourth degree of consanguinity or second of affinity.

The LAM does not provide for a specific procedure for the challenge of arbitrators, so it is understood that such process shall be governed by the rules of the arbitration center chosen by the parties. What the LAM does expressly provide are the persons who must resolve the challenge. In this sense, Art. 21 of the LAM states the

following scenarios:

a. In the case of a tribunal, it must be resolved by the arbitrators not challenged. If they disagree, the challenge must be resolved by the director of the center.
b. In case the challenge lies on the tribunal, it must be resolved by the director of the center.
c. In the case of a sole arbitrator, it must be resolved by the director of the center.
d. In the case of an independent tribunal, it must be resolved by the arbitrators not challenged; and
e. In the case of a sole arbitrator or if the challenge lies on the tribunal, it must be resolved by the director of the nearest arbitration center to the domicile of the claimant.

Arbitrators appointed by parties' agreement can only be challenged for unknown reasons at the time of the appointment or supervening at the appointment.

Finally, we must point out that the number of challenges in Ecuador has historically been low.

22. Have there been any recent decisions in your concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

Not to the best of our knowledge.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

Not to the best of our knowledge.

24. Are arbitrators immune from liability?

Art. 16 of the LAM provides that an alternate arbitrator must always be appointed to replace arbitrators with an impediment to continue being part of the arbitral tribunal. Additionally, the LAM provides the possibility of challenging or replacing arbitrators prevented from continuing to be part of the arbitral tribunal, for which a new selection must be carried out in accordance with the procedure set out in Art. 16 of the LAM.

Therefore, in case of a truncated tribunal, it will be prevented from continuing until the arbitrator who caused it is legally removed and replaced by the alternate arbitrator or until the parties designate a new arbitrator. Arbitration Centers regulations have rules concerning the appointment of alternate arbitrators and their designation as principal is not complicated.

25. Is the principle of competence-competence recognized in your country?

Yes. Art. 22 of the LAM provides that, in the substantiation hearing, once the arbitral secretary has been appointed, the arbitration agreement must be read and the tribunal must decide on its own jurisdiction. Although the LAM does not expressly state it, it is understood that this decision must be made *ex officio*, even if the parties have not challenged the competence of the arbitral tribunal.

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

According to Art. 7 of the LAM, when parties have agreed to arbitration, the judges must be inhibited from knowing the lawsuit, except for the cases provided in the LAM. This article also establishes the principle *in dubio pro arbitri*, whereby, in case of doubt, judges must be in favor of the dispute being resolved in arbitration.

Art. 8 of the LAM provides that, (i) parties may give up in writing by mutual agreement to the arbitration agreement; (ii) if the claim is filed before the judges, and the defendant responds to the claim without alleging the existence of an arbitration agreement, it will be understood that the parties have given up the arbitration agreement and the judges will now be competent to hear the dispute. These are the only exceptions referred to in Art. 7.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

According to Art. 10 of the LAM, the arbitration begins with the presentation of the claim before the arbitration center.

There is no statute of limitations in the Ecuadorian legislation for starting an arbitration proceeding other than the general statute of limitations provided in the Civil Code or in the law applicable to the dispute.

28. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

Under Ecuadorian legislation there is no possibility for the state or a state entity to allege state immunity. If the state or a state entity agreed to arbitration, then it must appear in the arbitration.

Regarding enforcement of national or foreign awards against the state or state entities, there are certain legal provisions that would allow the state or state entity to invoke immunity, to safeguard public assets or to allow the proper functioning of the state.

29. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

If the defendant does not answer the claim, it will be considered as a refusal of the grounds of the claim (Art. 11 LAM). The absence of the defendant will not prevent the arbitration from continuing (Art. 14 LAM).

There is no legal norm in Ecuador that empowers local courts to force the parties to appear in an arbitration proceeding. However, Art. 7 of the LAM provides the *pro arbitri* principle by which judges must inhibit to accept claims subject to an arbitration agreement. Such rule also provides the *in dubio pro arbitri* principle in favor of the arbitration agreement, so the judges must order to arbitrate the dispute.

30. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

No, third parties cannot join arbitration proceedings, however, if there is an agreement among the parties to allow or prevent the intervention of third parties, the tribunal will be bound by it.

31. Can local courts order third parties to participate in arbitration proceedings in your country?

There is no legal norm in Ecuador that empowers local courts to force third parties to appear in an arbitration proceeding. Notwithstanding the foregoing, arbitrators have the power to directly issue and execute precautionary measures, without the assistance of local courts, whereby they may enforce a third party to appear in arbitration, as witness to render statement.

32. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

According to Art. 9 of the LAM and Art. 8 of its Regulations, arbitrators may issue any precautionary measures that they deem necessary in order to: a) Maintain or re-establish the status quo pending the settlement of the dispute. B) Prevent the continuation of any current damage, or the materialization of an imminent damage or the impairment of the arbitration procedure. c) Preserve assets that are the subject of the process or, in general, the assets of the debtor or creditor. d) Preserve evidence that may be relevant to resolve the dispute. e) Guarantee compliance with the obligations of the arbitration. f) Preserve the jurisdiction of an arbitral tribunal.

For the enforcement of the precautionary measures, arbitrators, provided that the parties have stipulated it in the arbitration agreement, shall request the help of judicial, police and administrative officials without having to resort to judges. If this is not provided in the arbitration agreement, any of the parties may request the judges to order the enforcement of the precautionary measures issued by the arbitral tribunal, without being construed as waiving the arbitration agreement.

However, if these measures are needed before the tribunal is installed or even before the arbitration claim is filed, ordinary judges can issue the measures until the tribunal is installed, without being construed as waiving the arbitration agreement.

33. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

No, there are none; however, Art. 7 of the LAM will apply. See answers 26 and 29 above.

34. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in

arbitration proceedings?

The LAM does not provide anything regarding the practice of the evidence, so the parties and tribunals have commonly been free to decide what rules will apply for the practice of evidence. In this sense, there is the possibility of applying “softlaw” rules, as IBA rules on practice of evidence in arbitration.

As well as in other matters, judges have no power to intervene in the practice of the evidence in arbitration.

35. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

The regulations of the arbitration centers will be applicable in terms of ethical standards for arbitrators since there is no regulatory body in Ecuador regarding professional ethical standards for arbitrators. As for the lawyers, the rules of conduct provided in the Organic Code of the Judicial Branch *(Código Orgánico de la Función Judicial)* will apply. Art. 330 establishes the following:

“Duties of the lawyer in defending a case:

1. *Act in service of justice and for this purpose collaborate with judges and courts.*
2. *Represent with loyalty, probity, truthfulness, honesty, and good faith.*
3. *Defend within the compounds of the law, regulations, and norms of the Conduct Code of Professional Practice that will be dictated by the Judicial Council.*
4. *Instruct and encourage clients to comply with the instructions of the courts and judges, as well as keep respect to them and to the persons involved in the process.*
5. *Fulfill obligations assumed with their representation.*
6. *Refrain from promoting the public dissemination of reserved aspects of the process in which it intervenes, not yet resolved.*
7. *Submit all writings in a process with all the elements required.*
8. *Report persons engaged in illegal practice of law.*
9. *Proceed according to the laws and with due respect to judicial authorities; and*

Any other determined by law.”

36. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

The LAM by default establishes non-confidentiality of arbitration, so confidentiality must be expressly agreed by the parties in the arbitration agreement.

Additionally, several national arbitral centers have promoted the application of rules or measures to promote transparency in arbitration.

37. Are there any recent decisions in your country regarding the use of evidence acquired illegally in arbitration proceedings (e.g. ‘hacked evidence’ obtained through unauthorized access to an electronic system)?

Not to the best of our knowledge.

38. How are the costs of arbitration proceedings estimated and allocated?

The LAM does not provide anything regarding the determination of the costs of arbitration. Arbitration centers have their own set of rules to estimate what is known as administrative costs (which includes arbitrators fees), which is typically a chart of total costs in accordance with the quantum of the claim set forth by claimant (the disputed amount). Apart from the administrative costs, some arbitration centers also rule on the expert fees, tribunal inspections and other common activities conducted during an arbitration.

As to the final allocation of said costs, the arbitral tribunal is fully empowered to determine whether claimant or defendant or both, shall bear them.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

When the claimant has requested, as part of his petition, interests regarding his claims, as well as the costs of the arbitration, there is no doubt that said interests and costs can be ordered by the arbitral tribunal in its award. However, in the cases where the claimant has not expressly requested them, there has been an open debate as to whether or not the tribunal should order them in the award, since there have been cases in which their order has been considered as *extra petita*, by the judiciary and ultimately causing the annulment of the

award.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Regarding local awards, Art. 32 of the LAM provides that they have the effect of a final enforceable judgement (with *res judicata* effect), and will be executed in the same way as the judgements of last resort following the enforcement proceeding, without the enforcing judge allowed to accept any exception, save for those that may arise after the issuance of the award. Additionally, according to Art. 363 of the COGEP, awards constitute *executive titles*, so their enforcement is direct without the need for a prior recognition process. Therefore, in Ecuador an award has the same enforcement power as a judicial judgement, it does not need any further recognition prior to its enforcement.

In Ecuador, according to Art. 76 of the Constitution, all awards shall be reasoned.

41. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

As set forth in the following question, awards do not need any recognition prior to their enforcement. Therefore, estimated duration of the judicial enforcement is the same as if it was a national award or a judicial judgement, which takes from 2 to 6 months, depending on the complexities of each case, among other factors.

Art. 32 provides that any party may request the judges to enforce the award, so it is considered that only the parties to the arbitration proceeding may request the enforcement of the award.

42. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

No. Art. 42 of the LAM provides that the awards issued in international arbitrations have the same effects and will be enforced in the same way as the awards issued in domestic arbitration, so that they do not need to go through a process of recognition prior to its enforcement. Although the use of the term “international arbitration” has raised certain concerns about which awards are considered “international”, in practice, it has been unquestionably accepted that this term includes both, those issued in international arbitrations, as well as those considered “foreign awards” although they were not issued within an international arbitration process. Therefore, foreign, or international awards can be enforced just like the national ones. In addition, Ecuador is a party to the NYC, so if someone wishes to request recognition of a foreign award, prior to its enforcement, the NYC will apply.

43. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

No, Ecuadorian law does not impose limits on remedies that could be granted through an award. The remedies considered “injunctive relief remedies” may encounter some difficulty in their enforcement since Ecuadorian law does not expressly regulate them.

44. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

According to Art. 30 of the LAM, awards are final and not subject to any appeal. Only clarification and extension (if the award does not refer to a particular petition of the claim) of the award may be requested. However, awards are subject to judicial control through a separate independent judicial action: the annulment action. According to Art. 31 of the LAM, the only grounds for annulment are the following:

1. The defendant has not been legally summoned with the lawsuit and the trial has been continued and terminated in default. It will be necessary that such lack of citation has prevented the defendant from deducting his or her exceptions or asserting his or her rights and, in addition, that the defendant claims for such omission at the time of intervening in the controversy.
2. One of the parties has not been notified of the orders of the court and this fact prevents or limits the right of defense of the party.
3. When the tribunal has not been summoned, the summons has not been notified, or after the summons has been issued, the evidence

has not been taken, despite the existence of facts that should be justified.
4. The award refers to matters not submitted to arbitration or awards more than what was claimed; or
5. When the procedures provided by this Law or by the parties for appointing arbitrators or constituting the arbitral tribunal have been violated.

The annulment action should be brought before the arbitral tribunal but will be resolved by the President of the Provincial Court of Justice (second level judge), within a period of ten days from the date the award was enforced. Once the annulment action is filed, the arbitral tribunal, within three days, will send the process to the President of the Provincial Court of Justice, who will resolve the annulment action within thirty days from the date he or she knowledges the case. Regulations of the LAM regulates this process. The annulment action filed outside the indicated term will be deemed as not filed and will not be accepted. In practice, the deadlines provided by this article are not met and annulment action processes can take between 5 and 8 months.

Whoever files the annulment action, may request the arbitral tribunal to suspend the enforcement of the award, rendering sufficient warranty about the estimated damages that the delay in the enforcement of the award may cause to the other party. The arbitral tribunal, within three days, must set the amount of the bond. The bond must be presented within the next three days.

Additionally, since the enter into force of the Constitution in 2008, it is possible to file an extraordinary protection action for the violation of constitutional rights that could occur through the arbitral award, only when the protection of such constitutional right cannot be pursuit through the annulment action. The extraordinary protection action is brought before the Court Constitutional of Ecuador

45. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

No. In Ecuador, the right to double instance or appeal is a constitutional right, which is inalienable. In the case of arbitration, since there is no right to appeal, the annulment action is considered as the double instance right, so any agreement waiving the right of requesting the annulment of the award will be considered null and void.

46. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

In national arbitration there is no possibility of successfully claiming sovereign immunity, since, as established in Article 32 of the LAM, the enforcement judge cannot accept any exception against the enforcement of the arbitral award.

In international arbitration, because international awards are enforced in the same way as national awards, there would also be no exception against the enforcement of said international award.

47. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

As mentioned in answer 12, the recently enacted Regulations to the LAM have introduced norms regarding the participation of non-signatory parties in the arbitration process. According with Art. 6 *"In addition to the cases specified in the law, the effects of the arbitration agreement reach: 1. To those whose consent to submit to arbitration is derived, according to the precepts of good faith, from their active and decisive participation in the negotiation, execution, performance or termination of the legal business that comprises the arbitration agreement or to which the agreement is related. 2. To those who intend to derive rights or benefits from the legal business, according to its terms, such as successors, assignees, among others. 3. To the bodies of the administrations originating the administrative acts."*

Please see answer 12.

48. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

Not to the best of our knowledge.

49. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

The recently enacted Regulations to the LAM introduced

the possibility of emergency arbitrator relief even though the LAM does not have any provision in this regard. In international arbitration, subject to arbitration regulations that provide this figure, it has been applied with relative frequency. Thus, emergency arbitrators' decisions should be enforceable.

50. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

No. In Ecuador, there are no arbitration laws or regulations that contemplate this possibility. However, through arbitration agreements, it has been proven that several parties, including the Ecuadorian State, have agreed to arbitration agreements that establish a certain set of rules for disputes up to a certain amount and other set arbitration rules for disputes that exceed that amount.

51. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Not through concrete actions to amend laws or arbitral regulations; however, there has been a great activity to promote equality at the academic and doctrinal level.

52. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

Not to the best of our knowledge.

53. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Yes, there are several cases regarding corruption matters. In Ecuador, corruption is considered a criminal matter, so the Integral Organic Criminal Code (*Código Orgánico Integral Penal, "COIP"*) will be applicable. The party that alleges corruption has the burden of proof, which will typically be the Office of the State General Prosecutor (*Fiscalía General del Estado*).

54. Have there been any recent court decisions in your country considering the judgment of the Court of Justice of the European Union in Slovak Republic v Achmea BV (Case C-284/16) with respect to intra-European Union bilateral investment treaties or the Energy Charter Treaty? Are there any pending decisions?

Not to the best of our knowledge.

55. Have there are been any recent decisions in your country considering the General Court of the European Union's decision Micula & Ors (Joined Cases T-624/15, T-694/15 and T-694.15), ECLI:EU:T:2019:423, dated 18 June 2019? Are there any pending decisions?

Not to the best of our knowledge.

56. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

Not to the best of our knowledge.

57. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

See answer 6.

58. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

See answer 6.

59. Is your country a Contracting Party to the Energy Charter Treaty? If so, has it

expressed any specific views as to the current negotiations on the modernization of the Treaty?

No, the insolvency of a party does not affect the enforceability of an arbitration agreement, however, the award resulting from that procedure will be affected since its enforcement will be submitted to the rules of insolvency, including the rules of priority of credits, in accordance with the Civil Code.

Due to the COVID-19 pandemic, the Humanitarian Support Organic Law (*Ley Orgánica de Apoyo Humanitario*) was enacted. This law establishes two new processes: the pre-bankruptcy exception agreement and the subsequent pre-bankruptcy exception process, upon which only the agreement of 51% of the creditors is needed in order to access them. Although these processes do not nullify the arbitration agreement, it is our opinion that they could make it unenforceable in practice.

60. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

No, Ecuador is not a party thereto.

61. Has your country expressed any specific views concerning the work of the UNCITRAL Working Group III on the future of ISDS?

Yes, Ecuador expressed its opinion and officially presented it to the United Nations General Assembly on 17 July 2019. Particularly, it proposed the signing of an international and multilateral treaty on Investor-State arbitration that regulates proceedings (and does not address matters of substance), and regulates the relationship between the signatory States.

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