The
Baker McKenzie
**International
Arbitration Yearbook**

Peru

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A.   Legislation and rules

A.1   Legislation

International arbitration in Peru continues to be governed by the Legislative Decree No. 1071 of 2008, based on the UNCITRAL Model Law and the New York Convention. No legislative amendments have been made to the Peruvian Arbitration Law since 2015.

A.2   Institutions, rules and infrastructure

The three most important arbitration institutions in Peru continue to be the Arbitration Center of the Lima Chamber of Commerce, the Arbitration Center of the Pontifical Catholic University of Peru, and the International Arbitration Center of the American Chamber of Commerce of Peru (AmCham).

Since last year's Yearbook, there have not been any new developments in the most relevant arbitration institutions in Peru, with the exception of the Arbitration Center of the Pontifical Catholic University of Peru ("PUCP Arbitration Center"). As was reported in last year´s edition of this Yearbook, on 15 June 2017, the PUCP Arbitration Center amended its rules to adapt more to international

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arbitration standards. Among the innovations of the new rules was the incorporation of provisions on emergency arbitration proceedings providing that: (i) the scope of application is restricted to disputes whose arbitration agreements have been signed and submitted to the Arbitration Center since the entry into force of the 2017 Arbitration Rules, unless otherwise agreed by the parties; and (ii) that the General-Secretariat is the competent authority to regulate the emergency arbitration proceeding.

On 3 October 2018, the PUCP Arbitration Center adopted the "PUCP Directive for the Service of Emergency Arbitration," establishing, among other things, that: (i) the ratification that the figure of the emergency arbitrator only applies to the parties that have signed an Arbitral Agreement after the entry into force of the 2017 Arbitration Rules; (ii) The request for an emergency arbitrator can be filed before or together with the Request for Arbitration; (iii) the entity in charge of designating the emergency arbitration is the PUPC Arbitration Center, and the emergency arbitrator to be appointed has to be part of the List of Arbitrations of the Center; and (iv) the maximum term for emergency arbitration proceedings is seven business days (providing that the defendant has been notified and has been able to respond).

B.   Cases

During the last 12 months, there has been one UNCITRAL arbitration award in an investment arbitration against the Republic of Peru ordering the discontinuance of the arbitration. Also, four new ICSID arbitration cases have been registered before ICSID against the Republic of Peru.

B.1   *Exeteco Internacional Company, S.L. (España) c. Republic of Perú*[4]

On 8 October 2018, an award was rendered in a UNCITRAL ad hoc arbitration initiated in September 2013 by Exeteco International

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[4] CPA Case No. AAA535 under the UNCITRAL Rules.

Company S.L. (España) against the Republic of Peru under the Spain-Peru BIT.

This investment arbitration was related to a concession awarded to the claimant and two other Spanish companies, Eulen and Montealto in 2011 for the construction and management of the first private prison in the city of Huaral, near the capital, Lima. Although the award has not been published, according to news the tribunal ordered the discontinuance of the arbitration since the claimant was not able to continue with the arbitral proceeding.

In addition, during 2018, four international investment arbitrations have been registered before ICSID:

(a) *Autopista del Norte S.A.C v. Republic of Peru*,[5] a contract claim regarding a concession for the construction of a highway in Northern Peru;

(b) *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru*,[6] an UNCITRAL investment arbitration administered by ICSID under the Investment Chapter of the US-Peru Free Trade Agreement regarding the issuance of bonds by the Peruvian Government from the Agrarian Reform in Peru 50 years ago;

(c) *ENAGÁS S.A. (España) and ENAGÁS Internacional S.L.U (España) v. Republic of Peru*,[7] under the Spain-Peru BIT, regarding a natural gas pipeline project; and

(d) *Sociedad Aeroportuaria Kuntur Wasi S.A. and Corporación América S.A. v. Republic of Peru*,[8] under the Argentina-Peru BIT, regarding the design, construction and maintenance of a new airport concession in Cuzco.

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[5] ICSID Case No. ARB/18/7.
[6] ICSID Case No. UNCT/18/2.
[7] ICSID Case No. ARB/18/26.
[8] ICSID Case No. ARB/18/27.

As of today, Peru has seven pending cases and 14 concluded cases before ICSID. The significant number of ICSID cases in Peru is the result of many years of foreign direct investment entering into the country, which is illustrated by the very different issues involved in each of these investment arbitrations, and not because of a state policy known for expropriation and anti-investment measures, like some other countries in South America.

Also, with respect to international commercial arbitration, the number of ICC cases seated in Lima, as well as ICC cases involving Peruvian parties seated abroad, have grown significantly.