

# Kluwer Arbitration Blog

## A “Transparency Lighthouse” for Arbitration in Peru

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In the last decades, Peru has been recognized to be a solid, convenient and leading choice as a seat for arbitrations in the Latin American region.

Peru is party to the [New York Convention](#) and the [ICSID Convention](#), as well as to several Bilateral Investment Treaties that provide for international arbitration as the applicable dispute resolution mechanism. The Peruvian Arbitration Act of 2008,<sup>1)</sup> based on the 2006 version of the [UNCITRAL Model Law](#), governs both domestic and international arbitrations and is viewed as a modern arbitration law in the region. In addition, domestic law<sup>2)</sup> requires all disputes arising out of State procurement contracts to be submitted to arbitration.

This regulatory scheme has allowed a steady development of the arbitration [system](#) and a healthy coexistence with the judiciary, while fostering foreign investment and socioeconomic growth. Nevertheless, in recent years, arbitration users began to raise queries concerning the legitimacy of arbitration because of the lack of publicly available information, especially with respect to arbitrators and their accountability. Some of these queries arose from the uncovering of bad practices and acts of corruption associated to the “Lava Jato” investigation, which managed to permeate arbitration in Latin America.<sup>3)</sup>

In light of all these circumstances, the National and International Arbitration Center of the Lima Chamber of Commerce ([LCC Arbitration Center](#)) has been active in strengthening policies and measures to (i) promote the highest ethical standards in the arbitrations that it administers and (ii) prevent bad practices. In particular, the LCC Arbitration Center has focused in developing transparency mechanisms that guarantee the legitimacy of arbitration, while contributing to achieve greater efficiency in the arbitration proceedings.

## The “Transparency Lighthouse” of the Arbitration Center of the Lima Chamber of Commerce

In 2019, the LCC Arbitration Center launched a digital platform named “*Faro de*

*Transparencia*” (“Transparency Lighthouse”), aimed at providing public access to key pieces of information with regard to arbitrations administered by the institution as well as the arbitrators acting in them since 2012.

Taking into account the confidential nature of arbitration in Peru<sup>4)</sup> and the scarcity of data with regard to arbitrators in the market, the main goal of the *Faro de Transparencia* is to grant arbitration users with more information to make better informed decisions when appointing arbitrators.

### **Providing key pieces of information**

The *Faro de Transparencia* makes publicly available information of all the arbitrators that participate in proceedings administered by the LCC Arbitration Center, regardless of whether they belong to the institution’s roster of arbitrators. Among the information provided are: (i) the number of cases in which the arbitrators have participated or are currently participating, (ii) the nature of those disputes, (iii) the names of the co-arbitrators in the tribunals, (iv) the law firms that have appointed the arbitrators, (v) the dates of the requests for arbitration and of the arbitral awards, (vi) the current status of the proceedings, and (vii) any disciplinary sanction that the arbitrators may have received from the institution’s Arbitration Court.

On one hand, by accessing this information, parties can get a broader scope of the experience, availability and track record of the arbitrators they intend to appoint, preventing subsequent unpleasant surprises in this respect. In addition, such information enables arbitration users to fulfill an exhaustive research with regard to any conflicts of interests that might come up and should be avoided or disclosed within an arbitration, such as dubious practices associated with repeated appointments of arbitrators. On the other hand, public access to said information encourages higher ethical standards and greater efficiency by arbitrators, who will be keen on maintaining a good performance and track record.

Moreover, the *Faro de Transparencia* provides access to important information relating to arbitral awards. The digital platform publishes the full texts of the awards that have been issued in proceedings involving the Peruvian State as a party, considering their public nature provided by law.<sup>5)</sup> On the other hand, even though arbitration proceedings between private parties are confidential, the *Faro de Transparencia* includes special anonymized summaries of arbitral awards that have been issued in commercial cases. The summaries provide information regarding: (i) the matter of the dispute, (ii) the nature of contracts, (iii) the applicable laws, (iv) the amount of the claims and (v) the legal topics addressed by the arbitral tribunals. Furthermore, the digital platform provides information of all awards issued in cases administered by the institution that have been set aside by Peruvian courts, which fortunately do not amount to more than 1%. Users may access the full text of the court judgement and the annulled award of either the cases in which the Peruvian State acted as a party and those between private parties.

Information on arbitral awards is relevant for potential arbitration users since it may

evidence the quality of the work of the arbitrators and the legal criteria followed in different disputes. In addition, all the above-mentioned information can lead to interesting academic research and consequent publications with regard to arbitration in Peru.

## **Strengthening arbitration in Peru**

The information of the *Faro de Transparencia* is available not only to users of the LCC Arbitration Center but to the general public. There is no charge for the use of the platform or the download of documents.

This digital platform, which was nominated to the Global Arbitration Review Awards 2020 in the category of “best innovations by an organisation”, constitutes a quantum leap in strengthening Peruvian arbitration and leading it towards higher standards of transparency, ethics and efficiency. The LCC Arbitration Center is currently working to introduce new features to the *Faro de Transparencia* which may turn into better services for its users.

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## References

- Peruvian Arbitration Act, Legislative Decree N° 1071, enacted on 27 June 2008 and in force since 1<sup>st</sup> September 2008. The full text can be read at: [http://spijlibre.minjus.gob.pe/normativa\\_libre/main.asp](http://spijlibre.minjus.gob.pe/normativa_libre/main.asp).
- Peruvian State Procurement Act, Law N° 30225, enacted on 12 March 2019 and in force since 13 March 2019.
- The “Lava Jato” investigation involves arbitration procedures conducted between the Peruvian government and the Odebrecht Group, in which the latter allegedly payed bribes to arbitrators in order to obtain favorable awards.
- Article 51 of the Peruvian Arbitration Act provides for the confidentiality of arbitration proceedings, unless otherwise agreed by the parties.
- Article 51 of the Peruvian Arbitration Act provides for the publicity of awards that were issued in proceedings in which the State acted as a party.

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