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The Permanent Court of Arbitration and the Republic of Ecuador Conclude a Host Country Agreement: What Does this Mean?

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On October 17, 2022, the Secretary General of the Permanent Court of Arbitration (“PCA”) and the Minister of Foreign Affairs of the Republic of Ecuador (“Ecuador”) signed in Quito a “Host Country Agreement” (the “Agreement”). This news has been well received, both in the Ecuadorian and the international arbitration community. It is also the culmination of various efforts made, on the one hand, by Ecuador to position itself as a pro-arbitration, pro-investment dispute resolution hub in Latin America and, on the other hand, by the PCA to continue enhancing its presence and accessibility in the region. What is more, this agreement is poised to have almost immediate effect. Through a streamlined ratification process, it is expected to enter into force early in the new year.

In the following sections, we explore (i) the main characteristics of the Agreement, and its implications from the perspective of both (ii) the PCA and (iii) Ecuador.

(i) The Agreement

The PCA’s Host Country Agreements with various of its Contracting Parties allow the PCA to offer the full benefits of its services on an increasingly global basis. These agreements establish a legal framework under which PCA-administered proceedings can be conducted in the country on an ad hoc basis, without the need for a permanent physical PCA presence in that territory, and under equivalent conditions to those guaranteed under the PCA’s Headquarters Agreement with the Kingdom of The Netherlands. In this vein, the PCA and the host country may also establish a PCA hearing facility in the host country.

The principal elements of the Agreement concern the privileges and immunities that are granted by Ecuador to arbitrators, PCA staff, and other participants in PCA-administered proceedings (such as counsel, agents, and witnesses) in the same manner as accorded by Ecuador to officials of comparable rank under the [1946 Convention on the Privileges and Immunities of the United Nations](#). At its core, this concerns immunities for all spoken or written words and acts in the discharge of participants’ roles in a PCA arbitration taking place in Ecuador, so as to guarantee the independence and neutrality of the proceedings regardless of their situs. As for the PCA, its premises, property, archives, and communications are also granted immunity.

Other practical matters are also addressed. Under the Agreement, Ecuador grants certain tax exemptions, as well as exemptions from financial controls or regulations that may interfere with the PCA's financial activities, including the administration of arbitration deposits. Further, the prompt and cost-free issuance of any required travel visas is guaranteed for all participants. Importantly, under Article 3 of the Agreement, Ecuador commits to making available, free of cost to parties in PCA proceedings, such office and meeting space as necessary for PCA activities.

(ii) Impact of the Agreement for the PCA

To make its dispute resolution services more widely accessible, the PCA has adopted a policy of concluding "Host Country Agreements" with Contracting Parties to either of its founding conventions, the 1899 or 1907 Convention for the Pacific Settlement of International Disputes. These agreements allow the parties in a dispute located in or near the host country to take full advantage of the flexibility and efficiency of PCA-administered proceedings in the host country's territory.

In particular, the signing of the Agreement with Ecuador represents an important milestone and has strategic relevance for the PCA. Ecuador has actively contributed to the growth of the organization and to its promotion as a preferred institution for handling international arbitrations. Indeed, Ecuador was one of the pioneering countries in including **PCA model clauses** in its State contracts, an area where PCA arbitration has grown significantly in recent years. An example of this is the renegotiated oil contracts entered into by Ecuador in 2010. These contracts contained **uniform dispute resolution clauses** that included ad hoc arbitration under the UNCITRAL Rules administered by the PCA. Notably, the Model Concession Contract under the Public-Private Partnership framework and the Model Mining Services Contract also provide for arbitrations administered by the PCA. Additionally, in 2018, Ecuador enacted the **Organic Law for Promoting Production, Investment Attraction, Employment Generation, and Fiscal Stability and Balance** ("Investment Law"). This law expressly establishes that investment contracts that exceed USD 10 million may be administered under the UNCITRAL Arbitration Rules by the PCA.

Furthermore, Ecuador has agreed to PCA administration of several investment arbitration disputes, including those between Chevron and the Republic of Ecuador, and the related PCA inter-State arbitration between **Ecuador and the United States of America**. The PCA's involvement with these arbitrations has confirmed its status as an appropriate institution for highly complex and sensitive proceedings.

Having Ecuador join the list of Latin-American countries with Host Country Agreements is a testament to the PCA's strong presence in the region. Indeed, the PCA has concluded these agreements with Argentina, Brazil, Chile, Costa Rica, Paraguay, and Uruguay. In part because of this strong network and its rich history with Latin America, the PCA decided to open—just three years ago—its first office in the region, located in Buenos Aires. This office allows the PCA to better serve the needs of the Latin-American community, and the Agreement with Ecuador only reaffirms the PCA's regional leadership.

(iii) Impact of the Agreement for Ecuador

From Ecuador's perspective, the Agreement is also highly relevant, as it constitutes further evidence of the country's intention to strengthen arbitration as a preferred mechanism for international dispute resolution. In the last five years, Ecuador has sent important signs to this effect. Among the most relevant, we can highlight the following:

1. In 2018, the Investment Law, in addition to mandate the inclusion of arbitration as a dispute resolution mechanism in all investment contracts entered into with Ecuador, it also strengthened the process of enforcement of foreign awards. Under this regulation, foreign arbitration awards will have the same effects and will be executed in the same way, as awards issued in domestic arbitration. This is without the need for a prior homologation process.
2. In 2019, the Constitutional Court issued judgments **No. 323-13-EP/19** and **No. 31-14-EP/19**, where it expressly recognizes that the cases of annulment of awards in Ecuador are exhaustive and emphasizes the principle of minimal court intervention in arbitration. In addition, in judgments **No. 1703-11-EP/19** and **No.1059-15-EP/20**, the Court clarified that the process for annulment of awards in Ecuador was abbreviated and, therefore, appeals provided for in ordinary lawsuits do not apply. These decisions are favorable for Ecuadorian arbitration and the selection of Ecuador as a legal seat of international arbitration.
3. In June 2021, Guillermo Lasso, the current president of Ecuador, **signed** for the second time the **Convention on the Settlement of Investment Disputes between States and Nationals of other States** ("ICSID Convention"), a decision that was upheld **by the Constitutional Court**. These acts were well received by the international community as a reaffirmation of the country's commitment to compliance with its international obligations and to the protection of foreign investment.
4. In August 2021, Lasso issued the **Regulation of the Ecuadorian Arbitration Law** ("AML Regulation"), a set of norms that apply to domestic arbitrations and international arbitrations seated in Ecuador. The AML Regulation contains important provisions for arbitration and is considered innovative for both the region and the international arbitration community. Among its main developments are: (i) the recognition of the application of the principles, uses, and best practices of international arbitration; (ii) the possibility of extending the effects of an arbitration agreement to non-signatory parties; (iii) the omission of formalities for the enforcement of foreign awards; (iv) the provision of emergency arbitration as a precautionary measure; (v) the limitation of liability of arbitrators to willful misconduct or gross negligence; and (vi) the limitation of the annulment of awards to those cases in which the reason for the claim causes irreparable damage to the party.
5. In 2022, Ecuador executed the Host Country Agreement with the PCA, guaranteeing all the benefits and immunities described above for the development of international arbitration proceedings under the PCA's auspices. According to the **Minister of Foreign Affairs of Ecuador**, this Agreement was signed to show the country's commitment to justice, the rule of law, and international arbitration.

Conclusion

Taking into account the mutual interest in strengthening the long-standing cooperation of the PCA and Ecuador, the Agreement should provide numerous benefits and help to:

- Raise Ecuador's international profile as an arbitral forum;
- Attract arbitrations to Ecuador that would otherwise be conducted elsewhere;

- Increase domestic and regional awareness of arbitration and other methods of dispute settlement offered by the PCA;
- Strengthen the cooperation between the PCA and national or regional arbitral institutions and facilitate the exchange of expertise; and
- Increase the accessibility of PCA-administered dispute resolution to Ecuadorian and Latin-American parties.

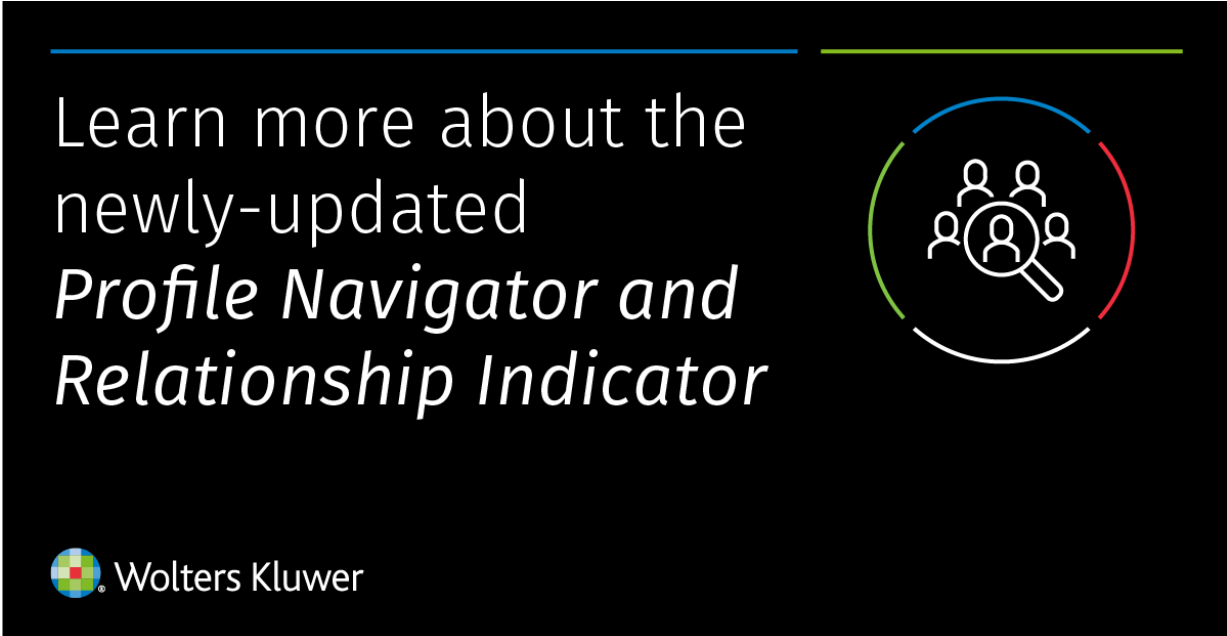
Building on all the above-noted efforts, the Agreement paves the way forward for both Ecuador and the PCA.

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