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Mandatory Registration of Arbitrators and Arbitration Centers in Peru: Legislative Decree No. 1660 and Its Perverse Incentives

Fabio Núñez del Prado Chaves, Nicolás Hernández Bernal (Rebaza, Alcázar & de las Casas) · Friday, November 15th, 2024

On September 21, 2024, [Legislative Decree No. 1660](#) (“Decree”) was enacted. The Decree strengthens the [National Registry of Arbitrators and Arbitration Centers](#) (“RENACE”), mandating the registration of arbitration centers and arbitrators. RENACE was created in 2020 by the First Additional Final Provision of [Urgent Decree No. 020-2020](#), which amended the legal framework for arbitration proceedings involving the Peruvian State.

While the Decree purports to enhance transparency and legal certainty in arbitration through the mandatory registration of arbitration centers and arbitrators in RENACE for public information purposes, the outcome is in the authors’ opinion, precisely the opposite.

Background: The Decree

Article 1 establishes that the Decree’s purpose is to modify the [Peruvian Arbitration Law](#), Legislative Decree No. 1071, by incorporating the Fifteenth Complementary Provision, the full text of which is detailed in Article 3:

“Fifteenth. National Registry of Arbitrators and Arbitration Centers—RENACE.

The Ministry of Justice and Human Rights oversees the National Registry of Arbitrators and Arbitration Centers—RENACE. The Ministry of Justice and Human Rights is responsible for registering arbitration centers and arbitrators for purposes of public information. This registry is for informational purposes only and does not affect the conduct of arbitral proceedings. Registration with RENACE is mandatory and free of charge. RENACE will contain information on arbitrators nationwide regarding their professional training, experience, and integrity, as well as on arbitration centers, in accordance with the regulations established for this Complementary Provision.

Arbitrators and arbitration centers shall promptly submit to the Ministry of Justice

and Human Rights the information necessary to ensure compliance with the foregoing paragraph, in accordance with the regulations established for this Complementary Provision. Information held by entities responsible for maintaining other registries of arbitration centers shall be shared with the Ministry of Justice and Human Rights for incorporation into RENACE. In the event that registered entities fail to provide information or provide incomplete and/or inaccurate information, the Ministry of Justice and Human Rights shall report such non-compliance through RENACE.”

Analysis

The Decree has drawn significant criticism from the Peruvian arbitration community, particularly from prominent arbitral institutions. On October 2, 2024, ICC Peru and four leading Peruvian arbitral institutions issued a statement titled “[No to State Intervention in Arbitration](#)“, strongly criticizing the Decree for disregarding the views of key stakeholders and failing to incorporate meaningful public consultation. They called for the inclusion of users and experts to ensure technical soundness and efficiency.

The statement also highlighted that the creation of RENACE has led to a proliferation of substandard arbitration centers that undermine legal certainty. Furthermore, the existence of two registries -RENACE (Ministry of Justice) and the Registry of Arbitral Institutions (OECE) under the new General Public Procurement Law – has proven to be inefficient, cumbersome, and costly for both users and the State; thus, it urged the establishment of a single, unified registry with strict standards.

The Decree appears to have the opposite intended effect. While its stated aim is to strengthen the legitimacy of arbitration, it is both inefficient and procedurally unsound, thus increasing the transaction costs within the arbitral system.

A significant concern within the Peruvian arbitral system is the existence of arbitration centers that fail to meet even minimum quality standards. Anecdotal evidence within the arbitration community frequently cites examples of questionable arbitral institutions accepting to administer cases without arbitration agreements or exhibiting bias by appointing questionable emergency arbitrators who issue unlawful emergency measures. It is evident that this requires legal regulation and the establishment of a rigorous registry of arbitration institutions, setting high standards for qualification.

Despite the clear need for regulation, the Ministry of Justice has established minimal registration requirements. This measure, rather than enhancing the legitimacy of arbitration, has led to a dramatic increase in the number of arbitration centers, with 268 currently registered—likely more than any other jurisdiction globally. A review of this registry reveals that the vast majority (97%) of listed centers are largely unknown within the arbitral community.

According to Fernando Cantuarias, co-author of the Peruvian Arbitration Law, this registry is largely a reactive measure to address the proliferation of numerous, often substandard, arbitration centers created due to the deficiencies in the State Procurement Law’s regulatory framework (see Interview with Fernando Cantuarias conducted on October 3, 2024). It is a superficial solution to a systemic problem. ICC Peru and various arbitration centers have emphasized that a single and robust national registry of arbitration institutions is required, with stringent entry requirements.

While the Decree's preamble asserts that mandatory registration enhances transparency and quality by allowing users to verify the legitimacy of arbitration centers, a review of the [registry itself](#) reveals that over 97% of the centers provide only basic identifying information. It is unclear how this limited information, particularly given the absence of minimum qualification requirements, could improve transparency, quality, or legitimacy within the Peruvian arbitral system. Furthermore, the Decree's explanatory memorandum indicates an intention to ensure that arbitration centers meet necessary standards. However, if registration requires no specific qualifications and the only publicly available information consists of basic identifying details, it is unclear how the Ministry of Justice can verify that these entities meet the necessary standards for administering arbitrations. This lack of clarity poses significant concerns.

Moreover, the Decree's explanatory memorandum identifies "the lack of legal certainty and the erosion of confidence in the arbitral system" as its primary objectives. However, the existence of 268 registered arbitration centers demonstrates that RENACE has, in fact, led to a proliferation of centers failing to meet minimum standards. The result is therefore the opposite of the stated intention: the inclusion of these centers within the arbitral system, under the Ministry of Justice's stamp of approval, is itself a source of legal uncertainty. The explanatory memorandum further asserts that RENACE ensures that registered centers have undergone an evaluation process and meet established standards. This claim is demonstrably false, as registration requires neither qualification nor fees. Such misleading statements in the explanatory memorandum only serve to confuse the general public.

The apparent ease and lack of cost associated with RENACE registration appear to have created perverse incentives, resulting in the indiscriminate proliferation of arbitration centers. Many center founders seem to believe that RENACE registration lends an aura of legitimacy to their institution. This is particularly problematic given that many involved in establishing these centers lack arbitration experience, and some demonstrably lack ethical standards. This situation mirrors the earlier "garage universities" phenomenon in Peru, where academic credentials were awarded with an evident lack of quality control. As with the prior educational crisis, the establishment of rigorous requirements for arbitration institutions is necessary to prevent substandard "garage arbitration centers" from operating within the Peruvian justice system.

Of even greater concern is the assertion in the Decree's explanatory memorandum that "international arbitration centers must register with RENACE, providing apostilled and officially translated statutes, regulations, and certificates of incumbency." This requirement is supposedly linked to the possibility of hosting international arbitrations in Peru and allowing international arbitration centers to have an institutional presence in the country. This statement reveals a profound misunderstanding of the international arbitral landscape. Is it truly believed that institutions such as the ICC, LCIA, ICDR, or SIAC will register with RENACE? The potential consequences are dire: courts may annul awards seated in Peru due to the non-registration of globally renowned arbitration institutions with RENACE. This measure will only serve to discourage the use of Peru as a seat for international arbitrations.

Regarding the registration of arbitrators, any measure mandating registration will likely produce unintended consequences. While the stated purpose of the registry is the dissemination of information, this function should ideally reside with properly accredited arbitration institutions that meet minimum quality standards. These institutions possess the necessary expertise to determine arbitrator qualifications and to publish not only biographical information (CVs) but also other data highly relevant to arbitration users, such as the number of appointments, the number and outcome

of challenges, fellow arbitrators on prior tribunals, and summaries of awards, among other details.

Furthermore, regulation often begets more regulation. There is a significant risk that the state will seek to further intervene in arbitration over time, creating increasingly cumbersome and bureaucratic registration requirements for RENACE. This is not an unfamiliar scenario in the Peruvian arbitral system. A few years ago, the State, through the Supervisory Body for State Contracting (OSCE), created the National Registry of Arbitrators (RNA), listing professionals eligible to serve as arbitrators in state contracts when appointed by an arbitration center in institutional or *ad hoc* proceedings, and for residual appointments. My personal experience with the RNA registration process was excessively burdensome, involving extensive coursework, documentation, and examinations, ultimately lasting eighteen months. Currently, only 138 individuals are registered with the RNA, and most are not widely recognized as arbitration experts. Indeed, many of Peru's leading arbitrators are not registered. The creation of the RNA resulted in a significant exodus of talent and brain drain from public procurement arbitration, raising concerns that a similar outcome could occur with RENACE. Many arbitrators, particularly those from foreign jurisdictions, are likely to avoid RENACE registration, thus limiting the parties' ability to select their preferred arbitrators.

Conclusion

Undoubtedly, the Decree has led to divided opinions about the potential benefits and serious drawbacks of the new regulations for RENACE and their impact on the Peruvian arbitral system. Currently, criticism and opposition are prominent, stemming from the proliferation of low-quality arbitration centers and arbitrator registries, which poses a significant risk to users and undermines public confidence in the process.

The Decree's final complementary provision mandates that the Executive Branch issue implementing regulations for the new Fifteenth Complementary Provision within sixty (60) business days. It is imperative that the relevant authorities convene consultations with experts, arbitration users, and other stakeholders during the regulatory process to ensure these regulations serve to genuinely enhance the legitimacy of the Peruvian arbitral system.

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This entry was posted on Friday, November 15th, 2024 at 8:12 am and is filed under [Arbitration institution](#), [Arbitrators](#), [Latin America](#), [Peru](#)

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