Volume X, Issue 1
May 2014

RW political risk newsletter

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In this Issue:

Confronting Investor-State Disputes: The Colombia Story

by Mariano Gomezperalta and Jordan Dansby

For some years, robert wray PLLC has analyzed the way in which governments, particularly in Latin America, can mitigate the risk of being sued in an investor-state dispute (ISD) and improve their chances of a successful defense for those cases that actually go to arbitration. In our experience, many governments react to investor claims with the same alarm as they would to an accident or unexpected calamity. As soon as a claim is filed, the state starts organizing itself internally, forming working groups, seeking outside help and otherwise taking damage control measures. They devote a significant amount of manpower and resources to the problem and, without exception, spend substantial sums of money addressing the claim. This process is not unlike a state's reaction to a natural disaster, an unavoidable and unforeseeable crisis threatening harm. But states typically take steps to cope with the threat of natural disasters, while generally neglecting the problem of potential arbitration claims. Although governments defend claims promptly and vigorously, most tend to do little to avoid them in the first place. The efforts of Colombia and its capital city Bogota tell an interesting story.

We received an invitation to work as outside consultants on a project designed to minimize the likelihood and impact of investment disputes in Bogota. The project unfolded in several phases. We reviewed Colombia's bilateral investment treaties (BITs) and studied how the District government is organized. High-level officials from all of the city's governmental entities were interviewed and we analyzed the resulting data to create a risk profile for each agency. From the background information and new data collected, we were able to issue a series of recommendations aimed at reducing the risk of an entity generating an ISD. These recommendations laid the foundation and established a framework for improved practices and procedures to not only help Colombia mount a successful defense in the face of an eventual claim, but also to mitigate the risk of an ISD arising in the first place.

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Authorities Comment on Avoiding Disputes and Arbitration

As part of its consulting work in Bogota, robert wray PLLC assisted the Secretary of Economic Development of Bogota and the Ministry of Commerce, Industry and Tourism with the organization of a closing seminar to present the results of the study performed by the RW team in Bogota.

We have invited four distinguished guests from the Bogota seminar to share their views regarding Colombia's risk mitigation strategies and other areas germane to the prevention of investor-state disputes in the region: ***Secretary Carlos Simancas****, Secretary of Economic Development of Bogota;* ***Adriana Vargas****, Director of Foreign Investment and Services at MINCIT;* ***Alan Thompson****, external advisor to the Government of Costa Rica and* ***José Manuel Alvarez****, Professor at Externado University, Colombia.*

Carlos Simancas, Secretary of Economic Development of Bogota

Q: *What role will the Secretary of Economic Development play in Colombia's overall strategy to prevent investment disputes?*

The Secretary of Economic Development of Bogota (SED) plays a very important role in the prevention of investment disputes. Together with the Ministry of Commerce (MINCIT) and the Inter-American Development Bank (IADB), we have carried out several training sessions for city officials to ensure they are well prepared to avoid and manage investment disputes that could result in Colombia being sued in international arbitration tribunals.

The SED will continue to support the national government (through MINCIT) in this important effort to reduce the risks of arbitration and improve the state's prospects in arbitration cases. We are

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Authorities Comment on Avoiding Disputes and Arbitration (*cont'd*)

working together to establish institutional mechanisms to prevent disputes and taking other actions to strengthen the institutional capacity of Bogota. We are also working to implement the recommendations provided by the outside consultants to the IADB.

Q: *How difficult is it for Bogota to work with the central government on a common strategy to prevent investment disputes when there are significant political and ideological differences between the two administrations?*

It is key to have good communication and coordination among the different government agencies. If we work together for the good and benefit of the city, our actions will be more effective.

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Adriana Vargas, Director of Foreign Investment and Services at MINCIT

Q: *Despite not having been sued in arbitration, it seems that Colombia has taken its arbitration prevention strategy very seriously. How have government agencies (both central and local) reacted to Colombia's arbitration prevention strategy? Has your Ministry had a hard time getting other agencies to cooperate?*

We have had a good response from the central government, the territorial entities and the Bogota agencies which has allowed us to achieve excellent results with our dispute prevention program. With respect to Bogota, we were able to carry out an initial "awareness" session on April 18, 2012, where we developed an important understanding between Bogota and the Ministry of Commerce to establish the framework for an advisory project supported by the IADB focusing on avoiding investment disputes in the Capital District. Given the high percentage of foreign investment that the capital receives, we held three more conferences on investment arbitration in Bogota.

Furthermore, we project that we will be able to launch in 2014 a Bogota-wide training session through an e-learning program. We have received complete support from Bogota's administration for this project.

The central government agencies and the Colombian territories have also responded in a very positive way since the beginning of the prevention program in 2008. We have held conferences and seminars, which are typically led by officials from MINCIT, in many cases with the participation of outside consultants and international experts. Between 2008 and 2010, we organized 14 seminars with the support of the IADB in ten different cities in Colombia (about 400 public officials attended). Between 2010 and 2012, we held 13 more seminars in various Colombian cities with the support of CONFECAMARAS[,an association of Colombian chambers of commerce]. I would also highlight that we released our "primer" on Colombia's investment obligations in 2009 with the goal of making public officials more aware of Colombia's commitments under our international investment treaties. This "primer" has been revised and updated two times. (The last version was released in 2013.)

We were also able to work with other agencies within the central government to agree upon an institutional document (CONPES 3684) which strengthened the state's investment dispute prevention strategy.

In 2013, Colombia published Decree 1939 which relates to the institutions in charge of defending international investment disputes in Colombia. This Decree is the result of a significant level of cooperation and interest from the various national agencies. Additional regulations were also issued with respect to Decree 1939 in Resolution 0305 of 2014 by the Ministry of Commerce.

I believe the foregoing shows the level of support and cooperation that central and local agencies have provided to our dispute prevention program.

Q: *What are the main features of Colombia's strategy? What do you think have been the main accomplishments of Colombia's prevention strategy?*

Colombia's dispute prevention strategy is based on the following elements: having a timely and efficient inter-agency cooperation process; implementing the right institutional changes; and training public officials on investment treaties and avoidance of investment disputes.

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Authorities Comment on Avoiding Disputes and Arbitration (*cont'd*)

Our most important accomplishment is that we now have more public officials reaching out to the Office of Foreign Investment and Services at MINCIT before they issue a measure that could have an impact on Colombia's international investment obligations. Contacting MINCIT is what we always recommend in our seminars and the materials we publish. In the end, we believe this is what is most helpful to reduce the risk of arbitration claims.

Alan Thompson, external advisor to the Government of Costa Rica

Q: *Has Costa Rica changed its prevention and/or defense practices in investment disputes after having to defend several cases and pay for awards?*

Costa Rica has one of the highest per capita foreign investment levels in Latin America. It has 27 trade and investment agreements in place which include provisions dealing with investor-state dispute (ISD) settlement procedures. To date, Costa Rica has received a total of 9 claims, including active cases. It has received adverse awards in 2 cases relating to expropriations of land (which were expropriated for the purpose of developing national parks). Costa Rica lost these cases although the sums awarded to the claimants were less than the original claims.

In 2009, the government established an inter-agency commission for the prevention and administration of ISDs. Since arbitration disputes are handled by the Ministry of Commerce, the Ministry also acts as "technical secretary" of this inter-agency commission and works collaboratively with other agencies such as the Attorney General of Costa Rica. To defend arbitration claims, Costa Rica has hired international law firms selected from a pre-qualification list that is periodically updated via a public bidding process.

The inter-agency commission has also helped create greater awareness of arbitration disputes. […] There is, however, still much to do with respect to training agencies and avoiding disputes and the government is currently evaluating alternatives to do so.

The inter-agency commission has also helped create greater awareness of arbitration disputes. In some cases, the commission has also effectively fielded investment questions that could have developed into actual claims. There is, however, still much to do with respect to training agencies and avoiding disputes and the government is currently evaluating alternatives to do so.

Manuel Alvarez, Professor at Externado University, Colombia

Q: *What are Colombian universities doing to improve the skills of future attorneys in areas such as investment arbitration?*

For over 8 years, we have carried out an annual seminar on investment arbitration, together with the Arbitration Center of the Bogota Chamber of Commerce. The seminar gathers practitioners, academics and public officials to discuss the latest arbitration developments. We also offer several related master's programs of 8 to 24 credit hours.

In addition, our university has been offering a one year seminar on arbitration for fifth year law school students. The first part of the seminar focuses on international commercial arbitration and the second part on investment arbitration. We have offered this course for two years now.

For over 8 years, we have carried out an annual seminar on investment arbitration, together with the Arbitration Center of the Bogota Chamber of Commerce...gathering practitioners, academics and public officials to discuss the latest arbitration developments.

As an optional course, for the last two years we have offered an open class that allows students to gain credits and participate in the Foreign Direct Investment Moot Court.

The Externado University, ICSID, the Arbitration Center of the Bogota Chamber of Commerce and American University in Washington, DC have also organized an investment arbitration competition which will be inaugurated this year.

Q: *What do you think are the main reasons why Latin American governments and investor claimants consistently choose large and renowned law firms in the US and UK to represent them in arbitration cases?*

In the case of Colombia, there is no prior experience with investment arbitration so legal constraints on hiring local law firms may be one reason. International law firms have the experience and are in a better position to participate in the bidding and selection process.

On the other hand, several law firms have come to Colombia to work with different government agencies which has allowed them to build alliances for future projects. ■

Confronting Investor-State Disputes: The Colombia Story (*cont'd*)

A Fraught Political Background

An interesting dynamic exists between the national government of Colombia and the city government of Bogota, and the city's economic and political situation is remarkable as well. Bogota claims a working-age population of approximately four million. Around 78 percent of all foreign direct investment (FDI) to Colombia is made in the capital city (excluding financial products and investments in the oil and gas sector). Bogota's gross domestic product (GDP) is larger than the entire GDP of some countries in the region, including Ecuador, Costa Rica, Paraguay and Bolivia. More than 1,400 multinational corporations have offices in Bogota, 74 of which are among the Fortune 500. Like any large city, Bogota has its challenges; but economically speaking, it posts some impressive numbers. The same can be said of Colombia on the whole as well.

Like any large city, Bogota has its challenges; but economically speaking, it posts some impressive numbers. The same can be said of Colombia on the whole as well. […] Politically speaking, however, Colombia and Bogota are a study in contrasts.

Among emerging economies worldwide, Colombia has performed remarkably well over the last decade and has become a major attraction for FDI. To achieve this success, the nation has undertaken significant structural reforms with the goal of improving its business climate. Colombia boasts the third largest economy in Latin America, trailing only Brazil and Mexico, and is among the top 30 economies worldwide. Clearly, Colombia and its capital are in economic harmony.

Politically speaking, however, Colombia and Bogota are a study in contrasts. At the time of writing this article, Colombian President Juan Manuel Santos had to back down from removing Bogota's mayor, Gustavo Petro, and his disqualification from public office for the next 15 years after receiving a ruling from the Inter-American Court of Human Rights ("IACHR"). The background of Petro's firing is a long story, but only a few details are necessary for our article. The Attorney General of Colombia ordered the removal of Petro based on Petro's alleged administrative failings during his attempt to reform Bogota's garbage collection services (Petro was trying to revoke the existing city contracts with private companies and replace them with public-sector employees). Petro appealed his dismissal in every way possible, including to the IACHR. Even though Petro has been reinstated as Bogota's mayor, the legal battle for his removal continues and it has generated an enormous amount of political and legal confusion.

The political-ideological differences between the central and district governments go deeper, however, than the current rift over the 9,000-or-so tons of solid waste that led to Petro's dismissal. The mayor is an ex-member of the M-19 Movement, an armed rebel insurgency born out of alleged electoral fraud during the elections of April 19, 1970. Although he was never linked personally with any acts of violence, Petro has publicly acknowledged his affiliation with the group. Like a number of other members of M-19, Petro opted for the political path after demobilization and has run for various political offices since, including the presidency in 2010 where he competed against Santos. Petro's successful 2011 mayoral campaign put him in office for a term that, if not for the garbage issue, should have continued until 2015.

President Santos, on the other hand, comes from a well-known Colombian family of prestigious lineage. His great-uncle, Eduardo, was President of Colombia and his cousin, Francisco, was vice-president during the administration of Álvaro Uribe, Santos's predecessor. Santos spent his formative years in elite private schools in Bogota before continuing his education abroad at the University of Kansas, the London School of Economics and Harvard. Santos also served as the Minister of Foreign Trade and promoted the same types of open market and liberalization policies behind the recently successful economic reforms.

Nevertheless, a Model of National and Regional Cooperation

It was in this environment of profound differences that we landed last April, sitting around a table with officials from both the federal Ministry of Commerce (MINCIT) and Bogota's district government. Both sides were tasked with working together on a strategy to prevent arbitral claims from arising due to actions taken by the city government. Contrary to what one might think given the above conflicts, during the nine months spent working with both sides we encountered nothing but complete cooperation and a coordinated effort on the part of both administrations to confront the issue. This is no small feat. The central government is responsible for negotiating the trade and investment agreements that form the legal basis for ISDs, as well as defending against claims when they arise. It is also the central government's responsibility to pay the awards when the state loses, even when the claim is based on actions taken by a local government. Thus, it would be easy enough for the district government to simply say, "your treaty, your case to defend, your problem," especially given that such arbitrations can entail multi-million dollar defense costs and even larger award payouts, as we will see below. Its outsized share of Colombia's total foreign investment, however, makes the negotiation of investment treaties of particular benefit and interest to Bogota. Statistics maintained by Colombia's National Planning Department show that at least 30 public-private partnerships (PPPs) are underway in Bogota, so it is quite likely that investors from countries with which Colombia has international investment treaties are using at least some of these PPPs as vehicles for FDI in Bogota. This larger share of PPPs and commensurate FDI also explains why Bogota is more likely to produce arbi-

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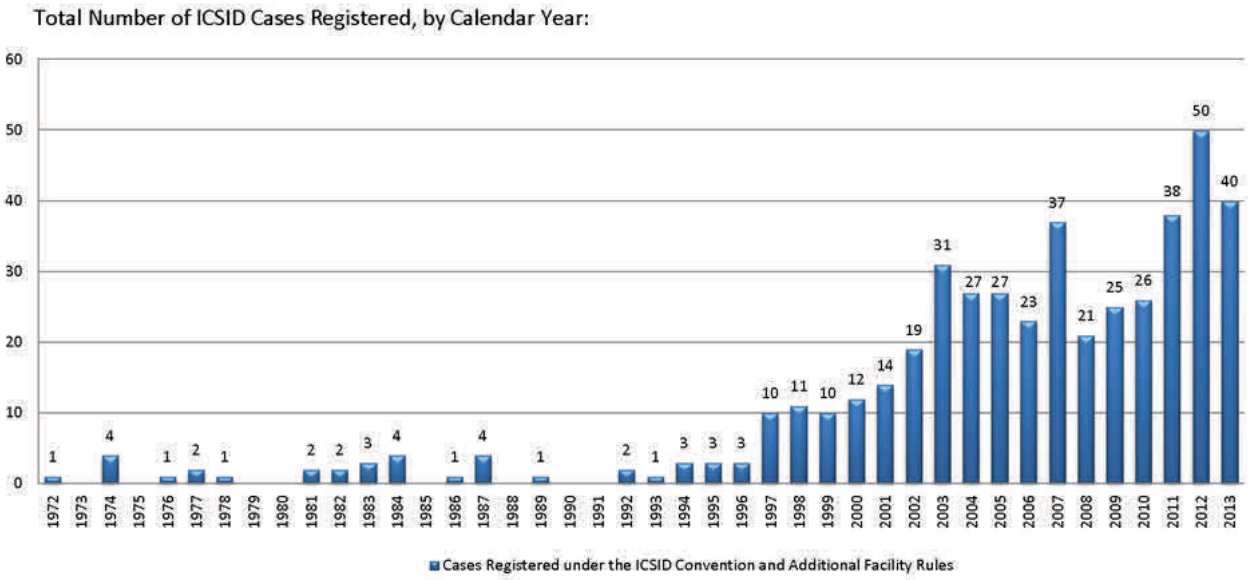
tral claims than other districts in Colombia. Bogota attracts the investment, but also gives rise to the potential claim; the central government paves the way for the investment to occur, but is left with the bill if things go wrong. The resulting tension is evident. The clear need to share responsibility under such circumstances made the level of cooperation demonstrated by both administrations during this project so encouraging.

This scenario of shared responsibility is common in many countries, especially in Latin America. It is worth pointing out, however, that the difference in perspectives does not occur, or is much less stark, in arbitrations originating in acts of the central government. The reality is that the central government has a natural unity: at the end of the day, everyone reports to the president. This unified front translates into better coordination and information exchange among the various actors, making it easier to deal with arbitral conflicts. Colombia represents a particularly good example. The central government there has adopted a series of formal policies to coordinate among the relevant agencies on foreign investment, ISDs and related matters. This has strengthened the government's ability to respond to ISDs as it has established financial and institutional structures designed not only to prevent disputes, but also to manage them when they arise. As far as the central government is concerned, Colombia is well positioned to deal with investment disputes. But imperfect cooperation between the central and local governments can confound even the best national efforts. Internally, there is typically less coordination and information exchange among the local agencies than is seen at the national level. The central government often negotiates the trade and investment agreements with no input from or participation by local governments and it must defend the cases and pay any resulting awards with little or no recourse against the local entities that gave rise to the claim. This disconnect creates a rather unfavorable environment for any claims resulting from actions taken by local governments or any other public entity separate from the central government. Although the investor-claimant has a clearly defined counterparty against which to file its claim, the defense will be pieced together and mounted by the central government in coordination with an array of local government actors, agencies and authorities.

More FDI = More ISDs

While Colombia and other countries in the region work to confront (or not) this central-local divide, FDI continues to pour in. Despite a significant reduction caused by the 2008 financial crisis, global FDI flows more than doubled between 2004 and 2013 and the developing world represents a disproportionate share of both the growth and the current total. In 2013, 52 percent of all FDI inflows went to developing countries, with Latin America leading the group in growth over 2012. From 2004 to 2012, net FDI inflows to Colombia averaged a year-to-year increase of nearly 42 percent. It is not be surprising, therefore, to find that such increases in investment also produced more ISDs. Statistics maintained by the International Centre for the Settlement of Investment Disputes (ICSID) show an uneven but clear increase in ISDs registered with ICSID over the same period of FDI growth noted above.



The United Nations Conference on Trade and Development (UNCTAD), which considers both ICSID and non-ICSID ISDs in its annual statistics, identified the same trend (*see the graph on page 6*).

In addition to the increase in sheer number, the cases filed have become more complex to resolve. The OECD reports that the costs of arbitrating ISDs averages more than US$8 million, with some cases costing more than US$30 million (including legal fees and arbitration expenses). A 2009 study found that, on average, ICSID cases were lasting 3.6 years from notice of arbitration to award. Some cases take much longer. *Abaclat and others v. Argentina*, an ICSID case in which Italian investors are suing Argentina for de-

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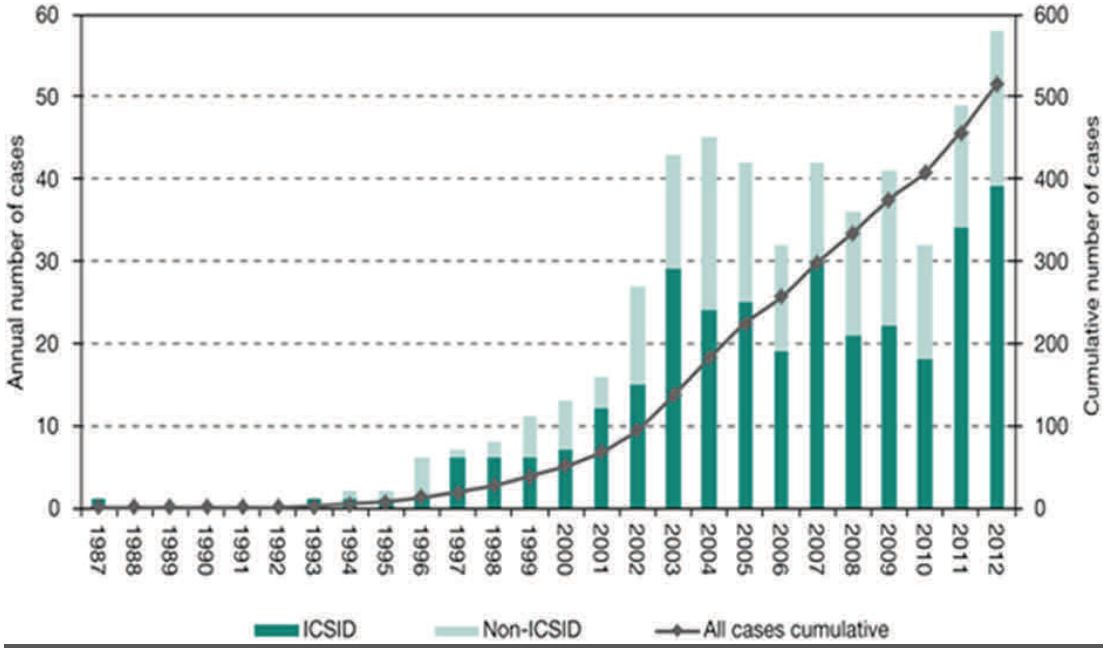
faulting on its sovereign bonds, is now in its seventh year. Resolving jurisdictional issues alone took 4.5 years. *Abaclat* is the first ISD in history where a large group of individual claimants were able to successfully plead a single "mass claim" and it is also notable for its novel attempt to designate bondholders as "investors" under the Italy-Argentina BIT. *Abaclat* is just one example of the complexity and expense that investor-state cases are now achieving. Other cases are expanding the boundaries of what is considered an "investor-state" matter to areas previously reserved for state-to-state dispute resolution mechanisms or domestic courts.

Investor-state disputes are expensive for the state even when it prevails, but what if the claimant wins? The data show that claimants are now winning more often and that awards are growing. According to UNCTAD, states lost in 70 percent of cases that reached a final award in 2012, representing an increase in claimant victories over previous years. The data for ICSID-only cases was similar: 63 percent of ISDs concluded in 2012 resulted in awards upholding claims in part or in full. And this "new generation" of ISD awards is expensive. In October 2012, an ICSID tribunal issued a US$1.77 billion award, the largest in history, in *Occidental Petroleum Corporation v. The Republic of Ecuador*. Although *Occidental* is currently an outlier, awards like *Abitibi Bowater Inc. v. Canada* (US$122 million) and *CME Czech Republic BV v. Czech Republic* (US$270 million), among others, show that payouts greater than US$100 million are increasingly common. Compare that to the US$460,000 award in *Asian Agricultural Products Ltd. v Sri Lanka* in the early days of investor-state arbitration or the US$16.6 million award in *Metalclad Corporation v. Mexico*, which was considered outrageous in its time.



UNCTAD's annual statistics, which consider both ICSID and non-ICSID ISDs, show the steady rise in ISDs over the period of time during which global FDI flows more than doubled (between 2004 and 2013).

Another clear trend is that certain sectors are disproportionately susceptible to more frequent and larger claims. In 2013, 47 percent of all new ICSID cases filed were in the sectors of "oil, gas and mining" or "electric power and other energy," a figure that amounts to 39 percent of all cases registered since the ICSID treaty was first enacted. In both cases, these sectors represent a far greater share of total cases than other industries. Countries like Colombia that have FDI in these sectors are paying particular attention, but countries with any FDI should take note of the current investment dispute environment: more cases are being filed, the cost of arbitrating those cases is growing, claimants are winning more often and the award amounts are increasing.

Colombia Responds to the Problems

Colombia stands out by taking a proactive approach to counter these trends. Despite never being sued in an ISD, Colombia recognized its susceptibility to large claims in the current ISD environment, as well as the risks associated with Bogota's high concentration of FDI. Our firm worked with the Colombian central government and the Bogota district government to design a first-of-its-kind arbitration prevention and mitigation program. By identifying the areas most likely to generate an ISD and the actions that would make such claims harder to defend, we were able to assist Colombia in its pursuit of best practices to avoid disputes in the first place and in its preparations to more effectively defend the claims that do arise.

To identify the agencies in the Bogota district government that were most likely to be a source of investor claims, we designed a survey focused on four main areas: contact with foreign enterprises, functions undertaken by the agency, enforcement and regulatory authority, and document management and communication practices. The survey was administered to high-level decision makers or legal officers in approximately 20 different agencies or governmental divisions. After the results were tabulated, the data was analyzed to

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determine which agencies were interacting most frequently with foreign investment, what type of authority each agency had over those entities, how the associated documentation was being managed and the level of communication that was occurring with the central government. Each answer was assigned a numerical risk value and the totals were weighted further based on the sector in which the entity operated.

By identifying the areas most likely to generate an ISD and the actions that would make such claims harder to defend, we were able to assist Colombia in its pursuit of best practices to avoid disputes in the first place and in its preparations to more effectively defend the claims that do arise.

The results confirmed that the agencies operating in sectors such as public works, infrastructure, environment and related areas ranked highest in risk factors. These entities tend to deal routinely with foreign concessions and investments and have the ability to operate and regulate with some degree of autonomy. The data also demonstrated that some agencies were doing better than others at preserving and organizing documentation and communicating regularly with the central government (i.e., MINCIT). Poor documentation and communication practices significantly exacerbated an agency's overall risk rating.

Our Recommendations

The survey identified sectors and agencies where disputes are more likely, as well as practices that might contribute to an investor claim arising, make a claim more difficult to defend, or both. To address these potential problem areas, we recommended that both the central and district government (1) agree on and monitor where disputes are likely to occur, (2) document everything in order to be ready for the unexpected and (3) collaborate closely to ensure that (1) and (2) occur in the first place and continue for the future.

Every organization has to decide where to allocate scarce resources. Recognizing that no government has the time and money to investigate every angry email or possibly failing project regardless of size, we proposed that all stakeholders agree on a definition of the type and scale of investment that merits special attention, as well as the circumstances likely to yield an arbitrable dispute. Doing so will allow the relevant decision makers to narrow their focus and catch most issues before they become full-blown ISDs.

Although defining and monitoring high-risk areas will go a long way towards preventing most disputes, it is impossible to foresee every claim in advance. To prepare for those unexpected controversies, we recommended implementing a uniform documentation management system across all agencies and between governments. The goal would be to organize and archive corporate documents, official communications and background information in a standard format for significant foreign investment projects or potential disputes and make the same accessible to MINCIT. If and when a dispute arises, the evidence needed to mount a good defense will be available to the central government and preserved in a coherent way.

A sustained, high level of cooperation and communication between both governments is necessary to develop uniform standards and share information in a useful way. To achieve this collaboration, we recommended the establishment of a permanent, joint working group and the adoption of a formal cooperation agreement with respect to FDI and ISD matters. The working group would be comprised of officials from MINCIT and key district agencies and would meet on a regular basis to discuss items relevant to ISD prevention and mitigation. The cooperation agreement could, among other features, provide: a formal roadmap for coordinating central-district government efforts on investment disputes; a means of involving investors in the working group to assist with early detection and avoidance of problems; and a process for harmonizing foreign investment agreements and concessions across agencies and between governments. Such an inter-governmental cooperation agreement might also include a process for allowing regional governments to participate in negotiations of future BITs and free trade agreements, giving those entities more of a stake in and a greater understanding of Colombia's international obligations.

After working closely with the central and district governments over a period of several months, it became clear to us that both wanted the same thing: promotion of investments that benefit Colombia and Bogota and prevention of investment disputes. Despite ideological differences between the two administrations, it was also clear that both governments could work collaboratively to achieve these goals. In this regard, Colombia can be a model for other countries in the region.

… it was also clear that both [the central and district] governments could work collaboratively to achieve these goals. In this regard, Colombia can be a model for other countries in the region.

Although every nation is different, there are risks that are common to every country in the region. The "open flanks" almost always involve issues of transparency, documentation and filing practices, response procedures when a claim is filed, and information sharing. Those areas are frequently determinative in preventing claims at the outset and the success or failure of a defense when arbitration becomes necessary.

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There are also common structural risk factors embedded in the way that countries attract foreign investment. Similar to initiatives first unveiled in the 1990s, a number of countries in Latin America have re-launched policies that invite private investment in highly litigious public sectors (e.g., energy, telecommunications, public works). There are almost 50 known investment arbitrations involving disputes that relate to some form of PPP. These partnerships come in many different varieties—contracts for the short-term provision of public services, management agreements, concessions, build-operate-transfer contracts, to name a few—but each such partnership shares the trait of opening the state up to potential claims.

With respect to disputes that arise due to actions taken by local governments, some of the same issues seen in Bogota also exist in other countries. Although Bogota's 78 percent share of total FDI is unusually high, the capitals of other countries have similarly disproportionate shares of foreign investment (61 percent in Mexico City, Mexico and 33.7 percent in San Jose, Costa Rica, for example). The fact that many arbitrations are born out of actions taken in remote areas does not mean countries should do nothing to prevent cases from arising in the areas with higher FDI concentration. (Indeed, a glance at the ICSID statistics in this area confirms that a significant number of cases originate in the cities that are home to the most FDI.) Colombia understands this well and is taking meaningful steps to implement a comprehensive strategy of ISD prevention. Colombia has also effectively laid the foundation for a model of cooperation that could improve the arbitral prospects of other countries in the region, or in Latin America as a whole. What remains now is the implementation of such a program in those nations that stand to benefit. ■

About the authors

Mariano Gomezperalta practices in the areas of arbitration, export credit agency (ECA) finance and political risk insurance at robert wray PLLC. He has represented governments, multilateral institutions and private claimants in numerous arbitrations and trade and investment matters. He has also served as a panelist in NAFTA arbitration proceedings.

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