

# BERETTA GODOY

Buenos Aires, January 16, 2009

Australian Government  
Attorney-General's Department  
Office of International Law  
Att. Mr. Stephen Bouwhuis

Dear Mr. Bouwhuis,

We would like to endorse the Australian Government's efforts to reform the 1974 International Arbitration Act with the attached submissions to the Discussion Paper, prepared by South American scholars and practitioners in the field of international arbitration, which we list by country, in alphabetical order:

Argentina: Federico Godoy  
Juan Sonoda

Bolivia: María Kim Shin

Brazil: Adriana Noemí Pucci

Colombia: Rafael Bernal

Ecuador: Hernán Pérez Loose

Paraguay: Diego Zavala

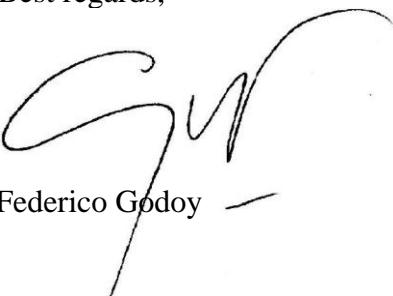
Perú: Fernando Cantuarias Salaverry

Uruguay: Eduardo Jiménez de Aréchaga

Venezuela: Luis Alfredo Araque  
Pedro Luis Planchart

Please find our bios attached. We will be pleased to provide you with any additional clarification or information that you may require.

Best regards,



Federico Godoy

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## COMMENTS TO DISCUSSION PAPER

### **Question A**

(i) *Should the meaning of the writing requirement for an arbitration agreement, in Part II of the International Arbitration Act (subsection 3(1)), be amended?*

(ii) *If so, should elements of the amended writing requirement in article 7 (option 1) of the UNCITRAL Model Law, as revised in 2006, be used in the amended definition?*

### **Comments to Question A**

(i) Yes. While in *Comandate Marine Corp* it was concluded that “[t]his is not a requirement that the contract be formed by such a document being signed or sent or received but that the terms and the assent to such terms are in a signed document or in exchanged documents”,<sup>1</sup> there is a vast number of contrary decisions worldwide.<sup>2</sup> The reality of international business transactions and trade shows that applying a narrow construction of the requirement of an “agreement in writing” would end in an array of enforceable contracts with unenforceable arbitration clauses.

(ii) Yes. Article 7 (option1) of the UNCITRAL Model Law strikes a fair balance between the need not of disposing altogether with the “agreement in writing requirement” for the sake of legal certainty and the needs of international business and trade.

### **Question B**

*Should the International Arbitration Act be amended to provide expressly that a court may refuse to recognise and enforce an arbitral award only if one of the grounds listed in subsections 8(5), 8(7) or 8(8) is made out?*

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<sup>1</sup> *Comandate Marine Corp v Pan Australia Shipping Pty Ltd* [2006] FCAFC 192, Paragraph 151

<sup>2</sup> In a 2007 case in Argentina, *Armada Holland B.V. Schiedam Denmark vs. Inter Fruit S.A.*,<sup>2</sup> the parties entered into a charter party agreement with respect to a certain vessel, through an exchange of telefaxes. The agreement included an arbitration clause setting forth that any controversy arising out of the agreement shall be subject to arbitration in London. Then the vessel owner proposed by telefax to change the chartered vessel, which proposal was accepted orally by the charterer. A dispute arose between the parties and the claimant submitted it to arbitration in London. After obtaining an award, its enforcement was denied in Argentina on the grounds that there was no agreement in writing, because the exchange of telefaxes was referred to a different vessel (C. Nac. Civ. y Com. Fed., 2nd Chamber, 05.08.2007, *Armada Holland B.V. Schiedam Denmark vs. Inter Fruit S.A.*, Lexis N° 70038668). A similar decision was rendered by the Italian Supreme Court: The parties concluded a contract through an exchange of telexes, which did not include an arbitration clause. A later telex including the arbitration clause was sent by one of the parties, and accepted orally by the other. The Italian Supreme Court ruled that there was no proof of a written agreement to arbitrate (*Marc Rich & Co AG v. Societa Italiana Impianti SpA*, 25 January 1991 (Yearbook Commercial Arbitration XVII (1992), p. 554); quoted in A/CN.9/WG.II/WP.139, page 8. See also, *inter alia*, Norway, Halogaland Court of Appeal, 16 August 1999, (Stockholm Arbitration Report, (1999), Vol 2, at 121); the court considered that a contract concluded by an exchange of e-mails by reference to the GENCON charter party did not constitute an arbitration agreement in writing in accordance to article II(2) of the New York Convention; The Netherlands, Court of First Instance of Dordrecht, *North American Soccer League Marketing, Inc. (USA) v. Admiral International Marketing and Trading BV (Netherlands) and Frisol Eurosport BV (Netherlands)*, 18 August 1982, (Yearbook Commercial Arbitration X (1985), p. 490); Germany, Brandenburg Court of Appeal, 13 June 2002, (No. 8, Sch 2/01); Spain, Supreme Court, *Delta Cereales España SL (Spain) v. Barredo Hermanos SA*, 6 October 1998, (Yearbook Commercial Arbitration XXVI (2001), p. 854): The enforcement of the arbitral award was not granted because the document supplied by the parties, containing the arbitration clause, was not signed; United States, District Court for the Western District of Washington, *Richard Bothell and Justin Bothell, d/b/a Atlas Technologies and Atlas Bimetals Labs Inc. v. Hitachi Zosen Corp et al*, 19 May 2000 (97 F Supp 2d 1048): the court considered that there was no indication on the face of the purchase orders or any other document exchanged between the parties of an agreement to arbitrate. See also A/CN.9/WG.II/WP.139, page 7.

## **Comments to Question B**

Yes. Any other alternative would be inconsistent with Article V of the New York Convention on the Recognition and Enforcement of Arbitral Awards and with Article 36 of the UNCITRAL Model Law.

## **Question C**

*Should the International Arbitration Act be amended to provide expressly that the Act governs exclusively an international commercial arbitration in Australia to which the UNCITRAL Model Law applies?*

## **Comments to Question C**

Yes. In our opinion, the purpose of implementing an international arbitration act is to provide certainty and uniformity as to the body of law applicable to the arbitration. Such purpose could be defeated if the International Arbitration Act were to be complemented with the local laws of each State and Territory.

## **Question D**

*Should the International Arbitration Act be amended to reverse the Eisenwerk decision, by adopting a provision similar to subsection 15(2) of the Singaporean International Arbitration Act?*

## **Comments to Question D**

Yes. However, in our respectful opinion, a better solution would be to abrogate Section 21 of the International Arbitration Act altogether. Article 2(e) of the Model Law gives the solution to this problem by stating that “where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in other way refers to the agreement of the parties, such agreement includes any arbitration rules referred to in that agreement”.

In other words, the Model Law already includes a provision for opting out from its procedural rules by incorporating by reference arbitration rules of other institutions. As stated by the Australian Law Reform Commission, “[a]rbitration requires a legal infrastructure in which to function. The arbitral process is intended to lead to a binding determination of a dispute. If it is to be binding, the law must support (among other things) the agreement to arbitrate, the arbitral procedures, the determination of substantive liabilities and crucially, the enforcement of the arbitral award”.<sup>3</sup>

While certain provisions of the Model Act can be dispensed by the parties, certain key Articles such as 1, 2, 3, 5, 6, 8, 11(4), 11(5), 16(1), 16(2), 18, 27, 34 and 35 provide this very legal infrastructure that makes arbitration possible and effective (*i.e.*, the “arbitral law”, as put in the Discussion Paper). In our opinion, its application could not be

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<sup>3</sup> Australian Law Reform Commission, Report No. 80, *Legal Risk in International Transactions*, paragraph 11.29

disposed of without severely impairing the effectiveness of the International Arbitration Act.

### **Question E**

*(i) Should these drafting inconsistencies in Part III, Division 3 of the International Arbitration Act be remedied?*

*(ii) If so, should it be clarified that sections 25 – 27 (relating to interest up to the making of the award, interest on the debt under the award, and costs) apply on an ‘opt-out’ basis (that is, applying unless the parties agree otherwise)?*

(i) Yes. Further, in our respectful opinion, Section 22 of the International Arbitration Act should be abrogated.

Section 23 (enforcement of preliminary orders) refers to the “arbitral law”, and there is no reason why the parties should opt out from this provision. Note that our comment refers to the enforcement of orders issued by a tribunal and not on the parties’ agreement on the tribunal’s powers to grant such orders.

In our opinion, Section 24 (consolidation of arbitral proceedings) should also follow an “opt out” form, since it is not a usual practice to include a comprehensive treatment of this matter in arbitration clauses.

(ii) Yes. However, Sections 24 and 25 should not be construed to release a party’s burden to make a claim for pre and post-award interest in order to be entitled to its award.

### **Question F**

*(i) Should the International Arbitration Act be amended to adopt recent amendments to the UNCITRAL Model Law?*

*(ii) If article 7 of the revised Model Law (amending the definition of an ‘arbitration agreement’) is adopted, should option I (providing a broad interpretation of the writing requirement) or option II (removing the writing requirement) be adopted?*

### **Comments to Question F**

(i) Yes, with the exception of the new Chapter VI A. It is our respectful opinion that the impossibility of obtaining *ex parte* preliminary orders may defeat the purpose of such orders and measures in cases where they are urgently needed to protect wilful actions or omissions of the other party, and ultimately force parties to resort to judicial courts.

(ii) In our opinion, Option I should be adopted for the reasons stated in our comments to Question A.

### **Question G**

*(i) Should the International Arbitration Act be amended to allow regulations to be made designating an arbitral institution to perform the functions set out in articles 11(3) and 11(4) of the UNCITRAL Model Law?*

*(ii) Would it be appropriate for other functions referred to in article 6 of the UNCITRAL Model Law, such as hearing challenges to arbitrators under articles 13(3) and 14, to be performed by an arbitral institution similarly designated under the International Arbitration Act?*

### **Comments to Question G**

(i) Yes. An arbitration institution would in most cases be better equipped than a court to make appointments of adequate arbitrators.

(ii) It would be appropriate with the exception of the functions set forth in Section 34(2), which relate to the arbitration law and should be discharged by judicial courts. In our respectful opinion, the best solution would be to make it clear that the parties have the option to opt out from the performance of the functions of Sections 13(3), 14, and 16(3) by judicial courts via making a reference to the rules of an arbitral institution or by directly appointing an arbitral institution to perform these functions.

### **Question H**

*Should the Federal Court of Australia be given exclusive jurisdiction for all matters arising under the International Arbitration Act?*

### **Comments to Question H**

Yes. As mentioned in our comments to Question C, one of the most important objectives of an international arbitration act is to provide legal certainty and uniformity, and in our opinion these objectives can be better achieved by unifying the application of such act into a single jurisdiction, to avoid the hazard of parochialism.

### **Question I**

*Do you have any other comments or recommendations for improving the International Arbitration Act?*

### **Comments to Question I**

Please see our suggestions in connection with Questions D and G.

\* \* \*

## **ARGENTINA**



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**FEDERICO GODOY** leads the Arbitration Department and the Transactional Group of Beretta Godoy, focusing in energy, mining and infrastructure projects.

He has represented parties in arbitrations conducted under the rules of ICSID, ICC, the Buenos Aires Stock Exchange, and ad hoc arbitrations. In foreign investment protection, he has represented oil & gas producing companies, electricity generators and distributors, toll road construction companies and mining companies in disputes involving Latin American countries.

Chambers and Partners chose Federico Godoy as one of the leading practitioners in Argentina in 2008 edition of its guide *Latin America's Leading Lawyers for Business*. Beretta Godoy was singled out as well for its Dispute Resolution practice.

He is Academic Deputy Director of the Investment Arbitration course at the *Universidad de Buenos Aires*, and an Invited Foreign Professor at the *Universidad del Rosario* in Bogotá, Colombia, where he annually delivers a seminar on Investment Arbitration. He contributes to Kluwer Arbitration as reporter for Argentina at the ITA Board of Reporters. He is a founding member of the Argentine Civil Rights Association and of CARAT, Comité Argentino de Arbitraje Nacional e Internacional.

Over the last years, Mr. Godoy has been a frequent lecturer at finance and protection of investment seminars in Argentina and abroad. Among others in the past five years:

- "Damages in International Arbitration: Strategies, Techniques & Presentation". 19th Annual ITA Workshop – Dallas, USA, 2008
- "The Three Pillars of Strength: Practice, Procedure and Law" - 6th Annual Miami International Arbitration Conference; ICDR, Miami, USA, 2008
- "Oil & Gas Arbitration", New York State Bar Association Seasonal Meeting, Lima, Peru, 2007
- "Financing Alternatives for the Mining Sector", Honorable Federal House of Representatives, Buenos Aires, 2007
- "Enforcement of arbitral awards under the New York Convention", 3rd ITA Americas Workshop, Institute for Transnational Arbitration (ITA). Buenos Aires, 2007
- "BITs as protection tools for natural resources projects" Mining Law session, International Bar Association, Chicago, 2006
- "Financing infrastructure projects", Latin Finance Roundtable, São Paulo, Brazil, 2006
- "From Calvo to ICSID: Challenges for Investor-State Dispute Resolution", New York State Bar Association, Santiago, Chile, 2004
- "Brazil-Argentina: Arbitration in Mercosur", Centro de Conciliação e Arbitragem, São Paulo, 2004
- "The Argentine Sovereign Debt: Alternatives at a crossroad", Honorable Federal House of Representatives, 2004
- "1<sup>st</sup> Cumbre Argentina: Investing in Recovery", Latin Finance, Buenos Aires, 2004
- "Financial Trust in Times of Economic Struggle", International Bar Association Conference, Durban, 2002
- "Protection of Foreign and Local Investor", FORUM Business Information, 2002

Federico Godoy holds a lawyer degree from the University of Buenos Aires where he was a member of the project: "Reform of the Administration of Justice", directed by Prof. Sergio Le Pera, at the Institute of Legal and Social Research Ambrosio L. Gioja.



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**Juan Sonoda** is member of the Dispute Resolution and International Business Transactions departments of Beretta Godoy. His practice comprises the areas of in international arbitration and cross-border litigation, as well as private equity, mergers and acquisitions and natural resources.

He has participated in ICSID cases under bilateral investment treaties and represented clients in international litigation before Argentine courts. He also provides counseling to foreign investors doing business in Argentina, from the inception of the investment and throughout the stages of the investment cycle.

He has participated as speaker in foreign investment conferences in Argentina and abroad. In 2007, he participated as speaker in the panel on "*Fair and Equitable and Most Favored Nation Treatment: New Liability for States?*" At the New York State Bar Association Seasonal Meeting, Lima, Peru.

He graduated *cum laude* from the University of Buenos Aires and achieved an LLM in Corporations law from New York University, where he was awarded an academic merit scholarship. He is admitted to practice in the City of Buenos Aires and in the State of New York.

Assistant professor of "Civil and Commercial Contracts" at the University of Buenos Aires for more than eight years, he has also published various papers on contracts, bilateral investment treaties, international business and foreign investment, quoted by Argentine courts. He regularly contributes with articles on Argentina to Global Arbitration Review. He was in charge of the overview on arbitration in Argentina for Latin Lawyer Reference section on 2008.

## **BOLIVIA**

# WÜRTHKIMCOSTADURELS

## ABOGADOS, SOCIEDAD CIVIL

### **Maria Kim Shin - Partner**

Did her undergraduate studies at Stern School of Business, majoring in International Business and Marketing (NYU).

She later went back to Bolivia and got her legal degree from the Universidad Privada de Santa Cruz (UPSA), where she graduated magna cum laude.

Furthermore, she has attended various seminars specializing in Hydrocarbons Law, as well as Comparative Corporate Governance at Oxford University, UK (Cardozo Law School). She has a Masters degree in International Private Law from the European Business School (Escuela Europea de Negocios).

She is the author of "Crossborder Insolvency, National Legislation with Worldwide Application". She is the author and coauthor of various articles published in Energy Press, Latin Lawyer, International Law Office, and Latin American Energy Report.

Maria Kim has acted as counsel in international investment arbitrations, actively participated in the negotiations and contracts for the transportation of natural gas between Bolivia and Brazil, and has been one of the main lawyers in the performance and implementation of them. She further specializes in regulatory, administrative law, international contracts, mining law and transportation of hydrocarbons by pipelines.

Languages: Spanish, English, French, Italian, and Korean

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## **BRAZIL**

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## **Résumé**

- Consultant at Veirano Advogados. São Paulo, Brazil
- Admitted to practice law in Brazil and in Argentina
- PhD (2003) and MA (1996), São Paulo University School of Law
- Ms. Pucci specialises in commercial arbitration and ADR, as counsel and arbitrator
- Member of the Roster of neutrals of the ICDR (International Centre for Dispute Resolution, a division of American Arbitration Association (AAA)
- Member of CIETAC's (*China International Economic and Trade Arbitration Commission*) International List of Arbitrators.
- Member of the Arbitration Panel of the São Paulo Commodities and Future Exchange (BM&F)
- Editor in chief of the Brazilian Arbitration Review
- Ms. Pucci is also a frequent contributor to collected writings related to arbitration and ADR and speaker in domestic and international Arbitration and ADR programs and conferences.

## **COLOMBIA**

## **RESUME**

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### **EDUCATION**

- Juris Doctor – Universidad El Rosario, Colombia (1973)
- II International Conference of Mercantile Law, Caracas, Venezuela (1988)
- Negotiation Seminar and Workshop by Prof. Roger Fisher (Harvard University), Bogotá (1993)
- Training in International Arbitration CIAC- IDB – OAS (1997)
- Diploma in International Commercial Arbitration, Chartered Institute for Arbitrators, Keble College, Oxford (2001)
- Workshop for Arbiters, CCI, Paris (2001)
- Arbitrator in the Willem C. Vis International Commercial Arbitration Moot (2003 to present)
- Internship on the handling of Arbitration operation, CIAC – AAA, New York (2004)
- Legal Writing, Introduction to the Anglo American System, Universidad de Navarra, Spain (2005)
- Introductory Course on the Anglo American Legal System, Cardozo University – Universidad de Navarra, Spain (2005)
- Visiting Scholar Program Professor Garriguez, Universidad de Navarra, Spain (2005)

### **PROFESSIONAL EXPERIENCE**

- Founder and Director of the Dispute Resolution Centre of the Chamber of Commerce of Bogotá 1987-1992, and since November 2003
- Director of the Training Centre of Arbitration and Conciliation of Universidad del Rosario, Bogotá from 1993 to 1995
- President of the Chamber of Commerce of Bogotá, 1987 to 1990
- Vice-President of Legal Affairs of the Chamber of Commerce of Bogotá, 1987 to 1991
- Legal Sub director of the Colombian Banking Association, 1973 to 1974
- Mr. Rafael Bernal has also been engaged in the private practice of law in the areas of arbitration, alternative dispute resolutions, corporations, insurance, competition law, and insurance, and acted as assistance of judges of the Supreme Court of Justice of Colombia and Bogotá's Superior Tribunal.

### **TEACHING EXPERIENCE**

- 1973 Universidad Del Rosario, Seminar Concerning Civil Law
- 1978 Civil Law Professor, Universidad Del Rosario
- 1978 Civil Law, Escuela Militar De Cadetes
- 1978 Commercial Law Professor Of Economics Faculty, Universidad Del Rosario
- 1979 Civil Law Professor, Universidad Militar
- 1982 Commercial, Corporations and Partnership Law Professor, Universidad Del Rosario
- 1987 Corporations and Partnership Graduate Professor, Pontificia Universidad Javeriana
- 1988 Corporations and Partnership Graduate Professor, Universidad De Los Andes
- 1989 Mercantile Procedures Course, Professor, Chamber Of Commerce, Commercial Lawyers College
- 1992 Professor of Mercantile Procedure Course, Pontificia Universidad Javeriana
- 1992 Commercial Law Director, Universidad Del Rosario
- 1992 Corporations and Partnership Course, Professor, Universidad De Caldas. Graduates.
- 1995 Graduate Studies Professor in Corporations and Partnership, Universidad Del Norte - Barranquilla
- 1996 Director Coordinator of Graduate in Arbitration, Universidad Del Rosario.
- 1996 Merger Course, Universidad Los Andes.
- 1997 Business Concentration Course.  
Master in Economic Law, Pontificia Universidad Javeriana.
- 2003 Arbitration Course, Professor, Universidad Sergio Arboleda, Graduate Studies in Administrative Law.
- 1996 to Date Corporations and Partnership Course Professor, Mercantile Procedure Professor in Business Law  
Diploma, Universidad Externado de Colombia
- 1999 to Date Association and Partnership Concentration Studies, Professor, Universidad Sergio Arboleda,  
Bogota.

Mr. Bernal has also been an Invited Professor at the Arbitration Seminar of the Universidad Menéndez y Pelayo, Madrid, and taught Alternative Methods of Conflict Resolution in the Universidad Católica Del Perú, Universidad Nacional de Santo Domingo, República Dominicana, and Universidad Católica de La Paz, Bolivia. He gave lectures in Chambers of Commerce in Colombia and capitals in Latin America.

#### **ARBITRATION**

1984	Arbiter of the Chamber of Commerce, Bogota, in Civil and Mercantile Subjects. Linked With Problems Related to Telecommunications, Corporations, Foreign Investment and Contracts of Works.
1994	Arbiter of Arbitration and Conciliation Centre of Fedelonjas Federation.
1997 – 2000	Arbiter of Brazilian Arbitration Tribunal.
1987 – 1992	Inter-American Commission of Commercial Arbitration Assistant, in Charge of Handling Procedure of Ciac Cases. .
2001	Arbiter in CCI Arbitraments Linked to Association Contracts, Telecommunications and Options
2004	Conciliation Course for Central America Commercial Integration System, El Salvador.
2005 – 2007	President of Inter-American Committee of Commercial Arbitration, CIAC.
2003 to Date	Arbiter for Honduras in the Arbiters Panel for Central America Integration Treaty Associate Member of Latin-American Group of the Arbitration Tribunal CCI- Paris. Associate Member of Arbitration Committee CCI. Director of Resolution of Conflicts Centre, Chamber Of Commerce, Bogota.

#### **MEMBERSHIPS**

- Associate Member of the Commercial Lawyers' Society, Bogota, Colombia.
- Co-Founder and Associate Member of Rosarist Lawyers College.
- Associate Member Of Lawyers' With Graduate Studies In Commercial Law College
- Honorary Member of Company Law Institute Cordoba, Argentina.
- Honorary Member of Lawyers' College, Honduras.
- Associate Member and Co-Founder of the Arbitration and Conciliation Centre, Chamber Of Commerce, Guayaquil, Ecuador.
- Associate Member Of The Executive Committee Of The Inter-American Commission Of Commercial Arbitration (1992-1994)
- General Director Assistant for the Inter-American Commission Of Commercial Arbitration since 1.993 until 1.998.
- President of Inter-American Commission Of Commercial Arbitration, CIAC.
- Mr. Bernal served as Board member of business and industrial associations and corporations, mainly in the construction, finance, investment, coffee, chemical product and agribusiness sectors.

#### **LEGISLATIVE WORKS**

- Associate Member of the Editing Committee for Decree No. 350/89, New Statute for Preventive Commercial Bankruptcy: Debtor's Reorganization Plan.
- Associate Member Of Editing Subcommittees For Civil And Commercial Arbitration Reform, Including An Instilment Of Modern Techniques Of Justice (1.987- 1989)
- Editing Of Decree Concerning the Instilment of Civil Judges with Graduate Studies in Mercantile Law.
- Associate Member Of Committee: Elaboration of Organic Statute for the City, Mayor's Office, Bogota, 1.990.
- Associate Member Of The Preparatory Committee For The Constitutional Assembly Concerning Justice Administration (1.991)
- Editor of Bill: Instilment of Alternative Methods for Conflict Resolution, And the Creation of Centers of Arbitration and Conciliation. (Bill 23 De 1.991)
- Associate Member of the Committee: Efficiency in Judicial Dispatches.
- Associate Member of the Editing Committee of the Reform for the Commercial Code, li Book: Commercial Associations or Partnerships (Bill 222 De 1995).
- Co-Editor of the Arbitration and Conciliation Bill, Bolivia.
- Consultant for the Reform of Arbitration and Conciliation Bill in Peru Congress. (1.995)
- Arbitration and Conciliation Bill Review Consultant in Ecuador. ( 1.997-2000 )
- Arbitration and Conciliation Bill Reform Consultant in Guatemala. ( 1.996)
- Designation of Non- Jurisdictional Procedures for Notary, Consultant in Peru.

- Co-Editor of Non-Judicial Conciliation and Arbitration Centers Bill in Peru.
- Alternative Methods for Conflict Resolution Bill, Co-Editor, In Honduras.
- Editor for Alternative Methods for Conflict Resolution Bill in El Salvador.

#### **CONSULTING**

- National Planning Department Consultant: Adoption of Washington Agreement of 1965 Concerning Differential Solutions Related With Investments. (Icsid). National and International Lecturer Concerning the Treaty at Hand, also Consultant in the Area
- Inter-American Development Bank (Idb), Arbitration Consultant, For Colombia
- Idb Consultant in the Preparation, Structure and Instilment of the Various Programs of Alternative Methods in Honduras, El Salvador, Paraguay, Costa Rica.
- Idb Consultant for the Alternative Methods in Conflict Resolution Project – National and International Arbitration and Mercosur – In Uruguay
- World Bank Consultant for Alternative Methods in Conflict Resolution Programs in Bolivia.
- Aid Consultant For Alternative Methods In Conflict Resolution Programs, In El Salvador, Honduras, Costa Rica, Guatemala, Bolivia Y Uruguay (Supreme Court Of Justice Project)
- Latin-American Federation of Banks Consultant - Felaban - For Conflict Resolution Network Programs for the Latin-American Banking System
- Development of Regulations for the Arbitration Centers Network Consultant in Argentina

#### **PUBLICATIONS**

- **Books**

- Commented Commercial Code, Economic Legislation, Ed. University, 1978
- Replaceable Sheets of the Commercial Code. Actualization 1974 to 1978
- Limited Liability Companies in Colombia, 1977
- Business Corporation In Colombia, Edit. Economic Legislation, 1980
- Elementary Course On Associations And Partnerships, Edit. Legal Source, 1980
- Current Commercial Code - Commented - Edits. Authors, 1985
- Ibero-American Legislation Concerning Commercial Arbitration, Outlooks And Perspectives, Edit. Chamber Of Commerce of Bogota. 1993
- Legal Aspects, Conciliation, University El Rosario, 1994
- Legal Aspects, Arbitration, University El Rosario 1994
- The New Alternative, Arbitration, Idb Project – Chamber of Commerce of Bogota, 1997
- Arbitration in, Cenac 2000

- **Conferences**

Since 1978 Mr. Bernal has been lecturer in forums, seminars, workshops and congresses concerning topics of commercial law (commercial law in general, corporations and partnerships, corporate groups, mercantile procedures, mercantile concurrences, etc.), economic and financial law related with justice, arbitration, conciliation and alternate systems of conflict resolution in Colombia, Latin-American, the united states and Spain, not only in universities but also lawyers bars, chambers of commerce and professional associations including state-owned entities.

- **Papers**

Mr. Bernal has published numerous papers in Colombia and abroad, mainly in Argentina and Spain, in the field of alternative methods for conflict resolution, arbitration and conciliation, corporations and partnership law, civil law, and the administration of justice.

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## **ECUADOR**

# CORONEL & PEREZ

A B O G A D O S

HERNÁN PÉREZ LOOSE

## EDUCATION

**Harvard University. Law School,** Cambridge, Mass.

Science Juridical Doctor (SJD), 1989.

Written dissertation: *“From harsh words to ‘Soft Law’: the changing international regime for multinational corporations”*

Co-winner of the Laylin Prize (Best written paper on International Law)

**Harvard University. Law School,** Cambridge, Mass.

Master of Laws (LL.M) 1985.

Courses and seminars on international commercial arbitration; transnational legal problems; foreign investments in Third World countries; comparative tax policy.

**Columbia University. School of General Studies,** New York, N.Y.

Political Science Department.

Courses on International Relations, Macroeconomics. 1981

**New York University. Law School.** New York, N.Y.

Law School

Master Comparative Jurisprudence (MCJ), 1982.

**Catholic University of Guayaquil. School of Law,** Guayaquil, Ecuador

Licentiate in Social and Political Science. 1976

Attorney at Law. (J. D.) 1979

## WORKING EXPERIENCE

**Coronel & Pérez, Abogados.** Guayaquil, Ecuador. 1991 to date.

Partner.

Main fields: international investment arbitration; commercial transactions; privatization; utility regulations; administrative and constitutional law; corporate law.

**Arbitrator. Arbitration Center of the Guayaquil Chamber of Commerce.**

Guayaquil. Ecuador. 2002-2003, 2006 to this date.

**International Arbitration. International Center for the Settlement of International Disputes (ICSID).**

■ **Legal Expert.** Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador. (Case No. ARB/06/11)

■ **Co-Counsel.** Duke Energy Partners and Electroquil v. The Republic of Ecuador. (Case No. ARB/04/19)

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## PROFESSIONAL EXPERIENCE:

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- Associate Attorney at **Mersán, Abogados**, Asunción, Paraguay, since September 1994. His practice includes commercial arbitration (both as arbitrator and as litigant) and litigation on tax and administrative matters. Consultant for national and international clients.
- Consultant for **The Center for Arbitration and Mediation of Paraguay** in commercial arbitration applied to Consumer Law.
- National Consultant for **The Paraguayan Ministry of Industry and Commerce**, contracted for the implementation of the “*Reforms to the Regulatory Investment Framework*” Sub-Program A, of the Sectorial Program of Investments of the National Government, with funds from the Inter-American Development Bank (IDB) and the United Nation Development Program (UNPD), May 1995 – March 1996. Worked in the reform of the regulatory framework of investments, especially in tasks related to commercial arbitration for the formation of the first Center of Arbitration in Paraguay.
- **Organization of American States (OAS)**, Internship at the Inter-American Commission on Human Rights, Washington, D.C., U.S.A. August – November 1992. Duties: drafting reports to Commission’s members on the situation of Human Rights in Latin-American countries; drafting opinions on Commission members.

## EDUCATION:

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- Participated at 27<sup>th</sup> Session **The Hague Academy of International Law**, External Programme, September – October 1998. Subjects addressed: territories of the States and their boundaries; recent aspects of arbitration between States; law of international watercourses; and the role of law in international economic integration.
- Participated in an advanced course on “*Banking and Capital Market Law*” at the **Université de Genève, Faculté de Droit**, June – July 1994.
- Specialized in Public International Law, International Trade and International Commercial Arbitration in **Yale Law School**, where he was awarded an LLM (Master of Laws), August 1993 – May 1994.
- Graduated from the Law School at the **Catholic University**, February 1992.

## OTHER ACTIVITIES:

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- Assistant Professor of Public International Law at the **Law School of the Catholic University “Nuestra Señora de la Asunción”**, Paraguay .
- Member of the Organizing Committee to the **SELA (Seminario en Latinoamérica de Teoría Constitucional y Política)**. SELA is a joint project of Law Schools from Universities in Latin America, U.S.A. and Spain.
- Member of the *Special Commission of Jurists*, convened by the Chamber of Commerce and Stock Exchange in 2001 in order to formulate a Bill on *Forms of Resolution to Disputes* – currently known as Law 1879/02 on Arbitration and Mediation.

## PUBLICATIONS

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- “*Principales Desafíos para el Desarrollo Institucional del Arbitraje en nuestro País*” (Main Challenges for Developing Institutional Arbitration in our country), article published by the magazine “*Revista Jurídica*” of the Law Student Center at the Catholic University “Nuestra Señora de la Asunción”, in issue 13, 2004.
- Co-authored “*ARBITRAJE Y MEDIACIÓN*”, 2003 (Arbitration and Mediation), a book published by the Paraguayan Center for Arbitration and Mediation under the co-ordination of Dr. José A. Moreno Rodríguez.
- “*La Autonomía de la Cláusula Arbitral y la Competencia de los Árbitros para Decidir sobre su Propia Competencia*” (The autonomy of the Arbitral Clause and Competence of Arbitrators to decide in matters of their own competence), a work published by the Paraguayan Law in May 2003.
- “*Crisis fiscales, Estados fallidos, Instituciones y Pobreza*” (Fiscal crisis, Failed States, Institutions and Poverty), a work presented at SELA held in Punta del Este, Uruguay, in 2002, and published by the Argentine editorial “*Editores del Puerto*” in 2003.

- Co-authored “EL ARBITRAJE EN PARAGUAY”, 2000, (Arbitration in Paraguay) a book published by the Uruguayan Center for Conciliation and Arbitration of the Commerce Stock Exchange.
- “*La Ley 1334/98 de Defensa del Consumidor y Usuario, la Utilización de la Conciliación y el Arbitraje en el Marco de la Ley de Defensa del Consumidor*” (Law 1334/98 on Consumer and User Protection, Use of Conciliation and Arbitration within the Framework of the Law on Consumer Protection) a work published by the Paraguayan Law, July 1999.
- “*El Arbitraje en los Contratos Administrativos*” (Arbitration in Administrative Agreements), a work published by the Paraguayan Law, July 1998.
- “*El Arbitraje en el MERCOSUR*” (arbitration in MERCOSUR), presented at the 5<sup>th</sup> International Law Congress held in Santiago, Chile, in August 1996, and published by the magazine “*Revista Jurídica*” of the Faculty of Legal and Diplomatic Sciences, Catholic University in 1996.
- “*El Arbitraje Comercial; Una Alternativa para la Administración de Justicia en el Paraguay*” (Commercial Arbitration: An alternative for Dispensation of Justice in Paraguay), a work published by the Paraguayan Law Review “*La Ley*”, January-March 1995.

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#### MEMBERSHIPS

- Associate Member and Member to the ITA Advisory Board – Institute for Transnational Arbitration (since 2.007).
- Arbitrator at the Centre for Arbitration and Mediation, part of the Paraguayan National Chamber of Commerce and Services (since 2.001).
- Executive Director of the Centre for Arbitration and Mediation, part of the Paraguayan National Chamber of Commerce and Services (1999-2001).
- Member of the Paraguayan-American Chamber of Commerce (1997).
- Member of the Paraguayan Bar Association (1997-).
- Member of the Inter-American Bar Association (1995-).

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#### AWARDS:

- Recipient of a scholarship awarded by The Hague Academy of International Law, for a course held at the 27th Session for External Programme.
- Scholarship awarded by the Erasmus Foundation, for a course held at the University of Geneva, Switzerland.
- Scholarship awarded by Yale Law School to complete the LLM (Law Master Degree) in the same university, United States of America.
- Graduated with Honors (“*Alumno Distinguido*”) from the Law School at the Catholic University “*Nuestra Señora de la Asunción*”, Paraguay.

## **PERÚ**

**FERNANDO CANTUARIAS SALAVERRY**

**Lawyer, Pontificia Universidad Católica del Perú, LL.M. Yale University.**

**Dean of the Law School of the Universidad Peruana de Ciencias Aplicadas (UPC). Professor of Arbitration in such Law School and in the LL.M programs in Business Law and Procedural Law of the Universidad Peruana de Ciencias Aplicadas. Visiting Professor of the Universidad Torcuato Di Tella (Argentina).**

**Domestic and international arbitrator. In 2006 has been recognized by the prestigious magazine Latinlawyer as one of the 34 main arbitrators in Latin America. In addition, the reputed publication Who's Who Legal – Commercial Arbitration 2007, Commercial Arbitration 2008 and Commercial Arbitration 2009- considers him among the 467 leading experts in this field, in 63 countries.**

**Member of the Board of Reporters of the Institute of Transnational Arbitration (ITA), of the CCI's Latin American Arbitration Chapter, of the Editing Committee of the Revista Peruana de Arbitraje and the Argentine Committee of Domestic and Transnational Arbitration.**

**Member of the arbitrator panels of the main arbitration centres of Perú and of the Energy Arbitrators' list (ICDR).**

**Member of the Commission of Review of the Peruvian Arbitration Law of 1996, which served as basis for the 2008 Arbitration Law.**

**Author of the Book "Arbitraje Comercial y de las Inversiones" (UPC, Lima, 2007) and more than 50 articles in his area of practice.**

**Lecturer and panelist in domestic and international seminars.**

## **URUGUAY**

## **EDUARDO JIMENEZ DE ARECHAGA**

Born in 1971. Doctor in *Derecho y Ciencias Sociales, Facultad de Derecho y Ciencias Sociales*, Montevideo 1996.

Has obtained a Master of Laws in International Legal Studies at Georgetown University Law Center, Washington D.C., May 2000 (Concentration in Public International Law and International Corporate Law)

Admitted to practice in the State of New York, United States, October 2003.

Since September 2006 is a member of the Uruguayan local team advising the Uruguayan Government in a claim brought before the International Court of Justice by the Government of Argentina in the case concerning Pulp Mills on the River Uruguay - Argentina v. Uruguay.

Member of the Panel which discussed the subject: "*Recent Trends in Inter-State Disputes in Latin America*" and speaker on the subject "*Argentina v. Uruguay at the International Court of Justice – Pulp Mills on the River Uruguay*" on the fall meeting of the New York State Bar Association – International Law and Practice Section, which took place in September 2007 in Lima, Peru.

Coauthor (with Carlos E. Delpiazzo) of the article published on the *X Congreso Iberoamericano de Derecho e Informática* and the *Anuario de Derecho Informático* entitled "*Administración de los Números IP a Nivel Regional e Internacional*" (Administration of IP Numbers at a Regional and International Level) and author of the article published in the International Law Practicum of the International Law and Practice Section of the New York State Bar Association entitled "*Argentina v. Uruguay at the International Court of Justice – Pulp Mills on the River Uruguay*".

Lectured about "Legal aspects of IP Numbers" at the V World Congress of Computer Law, held in Santo Domingo, Dominican Republic in October 2005.

Took the following courses: Advanced Course on the Management of Investment Disputes (OEA - UNCTAD, Montevideo, 2007); LLM Judicial Observation Program (U.S. District Court for the District of Maryland, April 2000); and 27<sup>th</sup>. Session of the Academy of International Law of The Hague (Montevideo, 1998).

Was an Assistant Professor in Public International Law at the *Facultad de Derecho y Ciencias Sociales* (Montevideo Uruguay, March 1997/July 1999)

Member of the International Bar Association, New York State Bar Association - International Law and Practice Section and Red Alfa – Redi (Latin American Organization dedicated to Computer Law and Information Society), and Board Member of the Uruguayan Chapter of the *Federación Iberoamericana de Asociaciones de Derecho e Informática* (FIADI), and Uruguayan Bar Association

Languages: Spanish and English.

## **VENEZUELA**

**ARAQUE BENZO, LUIS ALFREDO**

Born in Caracas, Venezuela, October 25, 1949.

**Education:** Universidad Católica Andrés Bello (1971) and New York University Law School (Master in Comparative Jurisprudence, 1975).

**Professional Experience:** Professor and Dean of Civil Law Department at the Universidad Católica Andrés Bello (since 1971).



Founding partner of Araque Reyna Sosa Viso & Pittier. Former director of the Venezuelan Executives Association (AVE) and former director of the Chamber of Commerce of Caracas; Former director of Caracas Stock Exchange. Permanent advisor of Fedecamaras and the Chamber of Commerce of Caracas (since 1985); Legal advisor in different commissions for the reform of Venezuelan Labor Laws; Member of the Tripartite Commission (government, labor, and employers sector) for the latest reform of the Labor Law (1997). Active member of the Legal Committee of the Venezuelan-American Chamber of Commerce and Industry (VENAMCHAM).

He is included in the list of arbitrators of the Center of Commercial Arbitration of the Chamber of Commerce of Caracas (Associated to the ICC) and of the Business Center of Conciliation and Arbitration (CEDCA). Member of the Capital District Bar.

**Languages:** Spanish, French and English.

**Areas of Practice:** Labor Law, Civil Law, Litigation, Arbitration and Alternative Dispute Resolution Law.

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**PLANCHART POCATERRA, PEDRO LUIS**

Born in Caracas, Venezuela, January 2, 1961.

**Education:** Universidad Católica Andrés Bello (“Summa Cum Laude”, 1985); New York University (Master of Comparative Law, 1987) and Fulbright Scholar (1986-1988).

**Professional Experience :** Professor and Head Master of Contracts and Secured Transactions Department (1997-2004); Head Master of the Private Law Department of the School of Law, Universidad Católica Andrés Bello (since 2004).



He is included in the list of arbitrators of the Center of Commercial Arbitration of the Chamber of Commerce of Caracas (Associated with the ICC) and the Business Center of Conciliation and Arbitration (CEDCA) (Associated with AAA); Partner of Araque Reyna Sosa Viso & Pittier; member of the Securities Market Committee of the Venezuelan American Chamber of Industry and Commerce (Venamcham); Member of the Capital District Bar.

**Languages:** Spanish and English.

**Areas of Practice:** Civil, Corporate and Banking Law, Public Credit, Project Finance, Contracts and Secured Transactions, Private International Law and Commercial Arbitration.

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