

'A REVOLUTIONARY LAW'

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Cuatrecasas hired Domingo Rivarola Reisz as a partner and head of its litigation and arbitration practice in Lima last November, bringing the office's partner count to six, and who echoes other Latin American lawyers' opinion that the use of arbitration is on the rise.



A specialist in national and international arbitration with more than 20 years' experience in controversy solutions, having participated as a defence lawyer in multiple arbitration cases, Domingo Rivarola Reisz is a member of the Colegio de Abogados de Lima, and is one of the lawyers on the list of the American Chamber of Commerce's arbitration centre.

Following his appointment as a partner at Cuatrecasas in Lima and head of its litigation and arbitration practice, Rivarola said the rise in the use of arbitration is due in part to the increase in the number of public-private partnerships (PPPs) for the development of large-scale infrastructure projects, and mergers and acquisitions, and that arbitration provides an assurance to investors that they will be able to resort to the use of arbitration in the event of a controversy arising.

Peru has made arbitration compulsory in cases relating to public procurement contracts, and the inclusion of arbitration clauses in PPP contracts is seen as a guarantee to investors, therefore making such contracts more attractive to signatories.

"Arbitration is not only on the increase between governments and foreign investors, but in general, given that a modern arbitration law is in force only since 2008, with new and peculiar features under which arbitrators are named by Chambers of Commerce of the place of the arbitration," Rivarola says. "Peru's law regarding the management of ICSID disputes also allows the Peruvian state to name top-level foreign law firms to represent it in investment controversies," Rivarola adds.

"It's a revolutionary law," he says, that gives Peru greater powers of defence in arbitration cases. Arbitration is most common in Peru in the energy sector, as well as infrastructure for state-sponsored contracts, according to Rivarola, whereas mining concessions and social conflicts relating to the mining industry do not frequently resort to arbitration. "In the energy sector we have mandatory arbitration, for the spot electricity market, for example, with all decisions made by COES, the committee for operation of the national grid, the electricity network's regulatory body, going to arbitration if any participant in the grid raises a controversy," he says.

'A VOLATILE SECTOR'

Arbitration in the oil sector is also common, particularly regarding contracts between the state oil company Petroperú, the Peruvian Hydrocarbons Agency, Perupetro, and the private sector, and Peru's hydrocarbons law, which was passed in 1993, led to an increase in the use of arbitration, he says.

"A volatile sector such as oil, due to the fluctuations in oil prices, means it is also likely that there will be more cases of arbitration going forward," he says. "These could be due to a change in government, or to changes in prices, or inefficient management," he says. When contracts are cancelled by the government, an arbitration case may commence to see whether the government legitimately cancelled it, and for which private companies have the guarantee of the use of an arbitration panel, he says.

"For Cuatrecasas, arbitration is an important source of work and revenue, and we expect to focus closely on it over the coming years, both national and international arbitration. Cuatrecasas has a very strong arbitration practice, and is a leader in the practice in both the Americas and Europe," he says.

Elsewhere in Latin America, Cuatrecasas has offices in Brazil, Colombia and Mexico. The Peru office focusses on corporate and M&A, finance, infrastructure, arbitration, and labour and tax law. "We

have some 35 lawyers dedicated to arbitration across the firm, and which give us a very strong international presence in arbitration," Rivarola says. The newly opened arbitration practice in Lima includes Rivarola, as head partner of the practice, and two other lawyers, and in the two months that the practice has been open it has attended to 10 cases, and Rivarola expects the practice to grow during 2020 as Cuatrecasas in Lima moves towards becoming a full-service firm.

The other partners in the firm's Peru office are Aldo Reggiardo, who is head of the finance and project financing practice; Óscar Trelles, head of corporate and M&A, Juan Pablo Porto, partner responsible for tax law; and Carlos Lasarte and José Moya, who are also part of the corporate and M&A practice.