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## FEATURED Q&A

# Should Investors Worry If Peru Pulls Out of ICSID?



President Pedro Castillo on Monday reversed course and again raised the possibility of nationalizing Peru's natural gas sector. // Photo: Peruvian Government.

**Q Before winning Peru's presidency in June, Pedro Castillo vowed to withdraw the country from the World Bank's International Centre for Settlement of Investment Disputes, or ICSID. The platform of his Perú Libre party argues that current arbitration panels, including ICSID, are partial to multinational companies and calls for a new dispute resolution center that would be part of the Union of South American Nations, or Unasur. Will Castillo follow through on withdrawing Peru from ICSID, and what would that mean for companies that have already invested in projects there? How would Peru's withdrawal from ICSID affect future investments in the country, and which sectors would be most affected? How likely is a new dispute resolution center under Unasur to be created, and what reason is there to believe it would function better than ICSID?**

**A Caroline Richard, partner at Freshfields Bruckhaus Deringer:** "President Castillo's campaign statements aren't novel. They echo the positions of other populist leaders, namely Hugo Chávez, Evo Morales and Rafael Correa, who withdrew from ICSID between 2007-2012. Even the proposal for a Unasur arbitration center is a decade old. Not only is Castillo's position not novel, it is also deeply flawed. First, the statistics disprove his claims of bias: ICSID tribunals rule, more often than not, in favor of states, not multilaterals (53 percent of the time to be exact). More importantly, ICSID, the institution, makes no substantive decisions or rules. It merely provides procedural rules and administrative support for arbitrations. Investment claims are decided by tribunals composed of arbitrators freely chosen by the parties

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## TODAY'S NEWS

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## Brazil Senators Back Bolsonaro Criminal Charges

The Senate committee's 7-to-4 vote concludes a six-month committee investigation of the government's response to the pandemic, which has claimed more than 600,000 lives in Brazil.

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## Brazil Inflation Data Surprises Market Analysts

Brazil's inflation rate rose faster than analysts had expected in early October, adding to pressure for a sharp increase in the pace of interest rate hikes at today's central bank policy meeting.

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## Mexico's Carso Sees Metro Line Repair Costing \$40 Million

Grupo Carso CEO Antonio Gómez said auditors determined that repairs to a collapsed Mexico City metro line could cost Carso as much as 1 percent of sales.

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Gómez // File Photo: Mexican Government.

## POLITICAL NEWS

## Brazil Senators Back Criminal Charges Against Bolsonaro

A Senate committee in Brazil on Tuesday recommended that President Jair Bolsonaro face criminal indictments related to his handling of the Covid-19 pandemic, the Associated Press reported. The 7-to-4 vote concludes a six-month committee investigation of the government's response to the pandemic, which has claimed more than 600,000 lives in Brazil, South America's most populous nation. The far-right president denies wrongdoing, and the decision on whether to file most of the charges will be up to Attorney General Augusto Aras, a Bolsonaro appointee who is widely viewed



Aras // File Photo: Brazilian Government.

as protecting him, according to the report. In addition to Bolsonaro, another 77 people, including the president's three sons, ministers, former ministers, federal deputies, doctors and businesspeople are on the list, Agência Brasil reported. The charges include crimes against humanity under the International Criminal Court in The Hague. Bolsonaro has refused to take the coronavirus vaccine despite contracting the illness last year, repeatedly dismissing the severity of the disease as a "little flu." Since the start of the pandemic, Bolsonaro has blocked local leaders from restrictions on activity aimed at stopping the spread of the virus, saying the economy took priority. He also has promoted anti-malaria drugs and other remedies long after testing showed them to be ineffective against Covid-19. He has assembled crowds without wearing masks and sowed

doubt about vaccines, falsely linking them to AIDS. Among the various complaints relating to others investigated by the committee, one health care provider is accused of forcing doctors to prescribe medications that are proven to be ineffective for the treatment of Covid-19 to their patients.

## BUSINESS NEWS

## Mexico's Carso Sees Metro Line Repair Costing \$40 Million

Grupo Carso, the construction firm controlled by Mexican billionaire Carlos Slim, said Tuesday that the cost of repairing a collapsed section of a Mexico City metro line that caused a fatal accident earlier this year could reach \$40 million, Reuters reported. Carso was one of three companies in an international consortium with Grupo ICA and Alstom that built the metro's Line 12. An elevated segment of track on the line collapsed in May, killing 26 people. Mexico City Mayor Claudia Sheinbaum and President Andrés Manuel López Obrador vowed a full investigation to determine the cause. Although Grupo Carso has denied responsibility for the accident, Chief Executive Antonio Gómez told analysts in an earnings call Tuesday that auditors determined the impact of the repairs to the company could be as much 1 percent of total sales. An independent engineering firm concluded missing bolts and poor welding contributed to the collapse, findings that were confirmed in a separate investigation by the Mexico City Attorney General's Office. Earlier this month, Mexico City officials said they were opening criminal cases against people and companies involved in building the metro line and urged the firms to quickly come to settlement deals. Critics of the government of populist President López Obrador suggest that his administration's austerity policies have led to a lack of maintenance of the city's metro system, while others point to a shortage of trained engineers locally. [Editor's note: See related [Q&A](#) in the May 12 issue of the Advisor.]

## NEWS BRIEFS

## Uruguay's dLocal Expands Into Central America, Asia

Uruguay-based dLocal, a payments platform, said today it is expanding to three new countries in Asia and Central America: Thailand, El Salvador and Guatemala. Together, the three countries represent a market of more than 93 million consumers and a total e-commerce revenue potential of \$26 billion, the company said. A year ago, dLocal, which was founded in 2016, announced new equity investments that valued it at \$1.2 billion, making it Uruguay's first unicorn.

## Puerto Rico's Congress Approves Debt Measure

Both chambers of Puerto Rico's legislature on Tuesday approved a bill that would cut the U.S. territory's government debt by half, the Associated Press reported. The controversial measure aims to end a financial restructuring process that began after Puerto Rico defaulted on more than \$70 billion in public debt five years ago. Critics say Puerto Rico does not have the finances to adhere to the proposed debt service and warned of the consequences of austerity measures. Puerto Rico's financial control board issued a statement Tuesday saying that it would carefully evaluate the measure, though it has said previously that it would not approve of the bill, according to the report.

## Swiss Firm Invests in Chilean Energy Assets

Switzerland-based private equity firm SUSI Partners on Tuesday said it has made its first investment in a Latin American market by acquiring a portfolio of distributed renewable energy assets in Chile. The investment is with developer BIWO Renovables and their commercial partner Latsolar. The solar and wind assets have a total capacity of more than 200 megawatts with projects currently in late-development stage.

## ECONOMIC NEWS

## Brazil Inflation Data Surprises Markets, Signals Rate Hikes

Brazil's inflation rate rose faster than market analysts had expected in early October, adding to pressure for a sharp increase in the pace of interest rate hikes at today's scheduled central bank policy meeting, Bloomberg News reported. Consumer prices rose 1.2 percent from September in the first half of this month, the national statistics institute (IBGE) said on Tuesday. It was the biggest increase for mid-October since 1995, according to the report, with annual inflation surpassing 10 percent. Consumer prices rose more than

“**[We] forecast the Brazilian real to hit record lows against the U.S. dollar by mid-2022.**”

— Brendan McKenna

expected for food and beverages, clothing, home expenses, personal expenses and air transportation, among other categories. “Overall, the biggest upward surprise was in freely determined prices,” as opposed to regulated or administered prices, Goldman Sachs economist Alberto Ramos told clients in a research note. “Against a backdrop of intense inflationary pressures and worsening balance of risks, the likelihood that the central bank will be able to drive inflation to the 3.50 percent target in 2022 is low,” Ramos added. The economy could face further challenges from a weakening real currency, analysts said. “Despite a sharper interest rate hike, we doubt the Brazilian central bank will be able to contain politically-driven volatility in the real or stem longer-term currency depreciation, and forecast the Brazilian real to hit record lows against the U.S. dollar by mid-2022,” Wells Fargo economist Brendan McKenna said in a research note Tuesday.

## THE DIALOGUE CONTINUES

### Who Is Best Positioned to Be the Next President of Chile?

**Q** **Approximately 50 percent of the Chilean population was undecided on who to vote for in the Nov. 21 presidential elections as campaigns began on Sept. 21, according to a recent poll by the Center of Public Studies (CEP). Leftist Gabriel Boric of the Apruebo Dignidad party is currently the front-runner with 23 percent support, with Sebastián Sichel of the right-leaning party Chile Podemos Más and José Antonio Kast of the Republican Party in second and third place, respectively. How is the race shaping up, and which candidates have the most momentum? What issues will be most important to Chilean voters, and how is the planned rewrite of Chile's constitution expected to influence the results of the November elections? Could the two right-leaning candidates divide votes and change the course of the election?**

**A** **Carolina Goic, member of Chile's Senate and former president of the Christian Democratic Party:** “A high percentage of Chile's population, as different polls show, says it has not decided on who to vote for in the next presidential election on Nov. 21. Although most polls favor the young Gabriel Boric, candidate of Apruebo Dignidad—a coalition of parties of what used to be the Frente Amplio plus the Partido Comunista—the truth is that the result of the electoral process is totally uncertain. We must remember that all polls were wrong in the primaries held earlier this year to elect representatives of the left and right coalitions. The candidates favored in the polls—Joaquín Lavín on the right and Daniel Jadue on the far-left—were decisively defeated by Sebastián Sichel (independent of the cen-

ter-right) and Boric, respectively. After the primaries, the center-left parties carried out their own process, with less participation, in which Yasna Provoste, current senator of Democracia Cristiana, was elected over Paula Narváez of the Partido Socialista. Today, according to the polls, the race is being disputed between Boric and José Antonio Kast, of the far-right Partido Republicano,

“**Proposals have been replaced by exclusionary projects that do not give space for a well-founded discussion of the most pressing issues...**”

— Carolina Goic

while the third place is in dispute. This polarization reflects the current fragmentation of Chilean society, where proposals have been replaced by exclusionary projects that do not give space for a well-founded discussion of the most pressing issues such as pensions, health, crime or the economy. However, after the last televised debate, Democracia Cristiana was positioned as an alternative for the second electoral round. The Constitutional Convention is operating in a separate lane, with its own controversies and proposals, and there is no perception that the debates of the convention will have much to do with who ultimately wins the presidential race.”

**EDITOR'S NOTE:** The above is a continuation of the Featured Q&A in the Oct. 14 issue of the Advisor.

## FEATURED Q&amp;A / Continued from page 1

to each arbitration, that is, by the investor and the state. Each appoint one arbitrator and agree on the third, presiding, arbitrator. This is no different from the proposed Unasur mechanism. As for the substantive rules that these tribunals apply, they are set out in treaties that states voluntarily sign. President Castillo is not proposing to withdraw from those treaties, but rather to use them to create separate arbitral institutions. In sum, withdrawing from ICSID, and turning toward different arbitral institutions, will not address perceived problems with ICSID arbitration. But it might spook investors. Peru has stood out in Latin America as a stable jurisdiction that embraces neutral investment dispute resolution through ICSID. A U-turn on that policy may do more harm than good. Indeed, Ecuador recently announced that it is rejoining ICSID in order to attract foreign investment."

**A** **Mariana Zepeda, Latin America analyst at FrontierView:** "Pedro Castillo's recent cabinet reshuffle seems to signal a commitment toward moderation, distancing himself from the Perú Libre priorities that most alarmed investors, such as clearing the path toward pursuing nationalizations or expropriations in key industries. Still, investors should remain cautious, as the president will remain under significant political pressure to take on more of a far-left agenda. For Peru, exiting ICSID itself would be far from catastrophic, but it would certainly raise investor concerns by challenging the perception that Castillo has opted to moderate his policy agenda. ICSID has a rocky history in Latin America; Bolivia famously withdrew from it in 2007, followed by Ecuador and Venezuela, while Argentina has long threatened its own exit. But it is not only Latin America's more closed economies that express suspicion toward ICSID; Brazil, for instance, never signed on to the convention, but it continues to retain the highest volume of foreign investors in the region. Even if Peru did withdraw from ICSID, multinationals already investing in local projects would still have avenues to

pursue dispute resolution options, particularly through Peru's many bilateral trade agreements. Therefore, in a high commodity price environment, Peru will likely still see foreign investment trickle in even if it withdrew from ICSID, particularly in the mining sector. It is overall regulatory uncertainty and Peru's current political environment that are more likely to deter foreign investment than an ICSID withdrawal itself."

**A** **Augusto Álvarez-Rodrich, daily columnist on political affairs at La República:** "President Pedro Castillo's government plan was prepared by the secretary general of the Perú Libre Party, Vladimir Cerrón. The plan called for the establishment of a communist society. This plan, however, has not been implemented, although it has also so far not been replaced by any other public document. The technical team in charge of economic affairs, headed by Pedro Francke, has opted for a different path and is desperately trying to build confidence for private investment, which is practically paralyzed due to the government's confusing signals, given the existence of multiple and contradictory leaderships. Confidence in private investment in Peru is currently at its lowest historical level, while regulatory risk for companies is at the highest point in the last three decades. The recent change of the ministerial cabinet that included Mirtha Vásquez as prime minister has been received in the business community with a moderate and cautious optimism, but it is very insufficient to recover the confidence lost in the first 90 days of Castillo in office. A decision such as Peru's withdrawal from ICSID would, at this point, mark a rainy day and greatly aggravate the outlook for investments and growth. However, as long as Francke remains minister of economy and finance, a decision like that will not come."

*[Editor's note: The commentaries above were submitted before President Castillo this week reversed course and again called for Peru's Congress to nationalize the gas sector.]*

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