

GAR INVESTMENT TREATY ARBITRATION

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# Ecuador

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## Overview of investment treaty programme

### 1 What are the key features of the investment treaties to which this country is a party?

#### [a] BITs/MITs

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration <sup>2</sup>
Argentina (1 December 1995)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Bolivia (15 August 1997)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Brazil (signed 25 September 2019)	Sort of	Yes	Yes	Yes	No	At least 75 days	No	Yes
Canada (6 June 1997)	Yes	Yes	Yes	Yes	No	6 months	Yes <sup>3</sup>	Yes
Chile (2 January 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
China (1 July 1997)	Yes	Yes	Yes	Yes	No	6 months	Yes	Amount of compensation in case of expropriation
Costa Rica (Not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Cuba (1 June 1998 /terminated)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Dominican Republic (4 November 2006 /terminated)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
El Salvador (14 January 1995 / terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Finland (16 December 2001 /terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
France (10 June 1996)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Germany (12 February 1999)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Guatemala (4 June 2005 /terminated)	BIT not available							
Honduras (24 December 2006 / terminated)	No	Yes	Yes	Yes	No	6 months	Yes	Yes
Italy (26 May 2005)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Netherlands (1 July 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Nicaragua (9 September 2002 / terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Paraguay (18 September 1995 / terminated)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Peru (10 December 1999)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Romania (18 July 1997 /terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Russian (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Spain (18 June 1997)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Sweden (1 March 2002)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Switzerland (9 November 1969)	Yes	Yes	Yes	Yes	No	No	No	No

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration <sup>2</sup>
United Kingdom of Great Britain and Northern Ireland [24 August 1995] <sup>4</sup>	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
United States [11 May 1997]	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Uruguay [31 July 1985 /terminated]	BIT not available							
Venezuela [1 February 1995]	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes

In addition to the above, Ecuador has entered into a number of multilateral trade agreements, which obligate the contracting parties to extend the principle of national treatment of goods established in the General Agreement on Tariffs and Trade 1994, including its interpretative notes.<sup>5</sup> However, unlike the bilateral investment treaties described above, these trade agreements generally do not include a chapter on substantive protections or procedural rights.

- [i] While not all BITs provide for ISDS, all treaties provide for state-to-state arbitration.
  - [ii] Article XIII(3)(b) states that '[a]n investor may submit a dispute as referred to in paragraph (1) to arbitration in accordance with paragraph (4) only if: [...] (b) the investor has waived its right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the contracting party concerned or in a dispute settlement procedure of any kind'.
  - [iii] By diplomatic notes dated 18 May 1999, the parties agreed to extend this BIT to the Bailiwicks of Jersey and Guernsey and the Isle of Man.
  - [iv] Andean Subregional Integration Agreement [Cartagena Agreement], 26 May 1969, 8 I.L.M. 910, <https://www.produccion.gob.ec/wp-content/uploads/2019/05/Acuerdo-de-Cartagena.pdf>.
- Economic Complementation Agreement No. 59 between the Governments of the Republic of Argentina, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, Member States of MERCOSUR, and the Governments of the Republic of Colombia, the Republic of Ecuador and the Bolivarian Republic of Venezuela, Member Countries of the Andean Community, 18 October 2004, <https://www.produccion.gob.ec/wp-content/uploads/2019/05/01-TEXTO-ACE-59-MCS-CAN-.pdf>.
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- Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Colombia, the Republic of Ecuador and the Republic of Peru, 15 May 2019 (CP 122) <https://www.produccion.gob.ec/wp-content/uploads/2019/06/Acuerdo-Comercial-UK-Andinos-PDF.pdf>.

## Qualifying criteria - any unique or distinguishing features?

### 2 What are the distinguishing features of the definition of “investor” in this country’s investment treaties?

Issue	Distinguishing features in relation to the definition of ‘investor’
Seat of the investor / place of business	Most Ecuadorian investment instruments provide that a legal entity incorporated or duly organised under the laws of a contracting party qualify as an ‘investor.’ Some treaties require that such entities have their substantive business operations / real economic activities (Chile, El Salvador, Nicaragua, Dominican Republic, Romania) and/or their seat (Germany, Canada, Argentina, Bolivia, China, Chile, Cuba, El Salvador, Spain, Finland, France, Costa Rica, Honduras, Italy, Nicaragua, Peru, Dominican Republic, Romania, Sweden, Switzerland, Paraguay, Venezuela and United Kingdom) within the territory of a contracting party.

Issue	Distinguishing features in relation to the definition of 'investor'
Types of entities included in the definition	Ecuadorian investment instruments protect entities with legal personality. Unincorporated entities will not, in general, enjoy legal protection, although a treaty may provide otherwise. For example, the Ecuador–Germany BIT and the Ecuador–Switzerland BIT explicitly specify that they cover entities without legal personality.
Legal entities controlled by nationals of the contracting party	Some of Ecuador's investment instruments extend protection to juridical persons that are not constituted under laws and regulations of a contracting party but are controlled, directly or indirectly, by a national or a legal entity of that contracting party (France, Netherlands, Paraguay, Sweden, Switzerland, United States, Dominican Republic).
Denial of benefits	The BIT with the United States contains a denial of benefits clause under which the contracting parties reserve the right to deny the benefits of the treaty to a company that does not have an economic connection to the state on whose nationality it relies. Three BITs (Argentina, Chile, and Venezuela) include a denial of benefits to investments made by individuals who are nationals of a contracting party in the territory of the other contracting party if such persons, at the time of the investment, have been domiciled for more than two years in the contracting party, unless it is proved that the investment was admitted into the territory from abroad. Two BITs (El Salvador and Nicaragua) include a denial of benefits to investments made by individuals who are nationals of a contracting party in the territory of the other contracting party if such persons, at the time of investment, have been domiciled for more than five years in this contracting party, unless it is proved that the investment was admitted into the territory from abroad. One BIT (Brazil) denies benefits to investments ultimately controlled by a national of the country where the investment was made.
Nationality of individuals	The law of the contracting party determines an individual's nationality. 'Investor' is typically defined to include persons having the citizenship or nationality of a contracting party. In some cases (Canada) the definition includes any individual who has citizenship or status as a permanent resident (regardless of their nationality). In other cases (Cuba), this definition requires both standards: the investor must be a citizen of the contracting party and have a permanent residence in its territory.
Dual citizenship	The Canada BIT states that investors in Ecuador cannot hold Canadian citizenship (no mutual restriction for investors of Canada).

### 3 What are the distinguishing features of the definition of "investment" in this country's investment treaties?

Issue	Distinguishing features in relation to the concept of 'investment'
Open-ended definition	Ecuador's investment instruments adopt an open-ended approach by referring to 'every kind of asset' and by including an illustrative list of categories of investment, eg: 'Investment' means every kind of asset [...] including, in particular, though not exclusively...'.  Ecuador's investment instruments list different categories of assets, which typically include: <ul style="list-style-type: none"><li>• movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges;</li><li>• shares of companies and other kinds of company interests;</li><li>• claims to money or to any performance having an economic value;</li><li>• intellectual property rights; and</li><li>• business concessions, including concessions to search for, extract and exploit natural resources.</li></ul>
Eligible assets	The investment instruments can also include returns and/or their reinvestment under their scope of protection (Bolivia and Costa Rica).  The BIT with Italy lists a number of specific activities that qualify as investments.  The BIT with Canada specifically includes financial services as investments protected under the treaty. Many BITs protect the guarantees or payments given by a contracting party to their national (natural or legal person) with respect to an investment in the territory of the other contracting party. Under this subrogation the contracting party recognises the rights over the transfer of any title of such an investor to the former contracting party (Argentina, Bolivia, Chile, China, Costa Rica, Cuba, Canada, El Salvador, Spain, Finland, Honduras, Italy, Nicaragua, Netherlands, Peru, United Kingdom, Dominican Republic, Sweden, Venezuela, Netherlands, Paraguay, Romania and Germany). BITs – such as the one with France – determine that the recognition of subrogation shall be applied on a case-by-case basis pursuant to the contracting party's criteria.
Directly or indirectly controlled by the investor	Some BITs provide that the investment may be owned or controlled by the investor directly or indirectly (Canada, United States, France, Honduras, Peru, Brazil and Sweden).  Ecuador's investment instruments generally protect all existing investments, including those made before the entry into force of the treaty.
Commencement of coverage	Some protect only those investments not involved in a dispute that arose before the treaty entered into force (Argentina, Chile, Costa Rica, Cuba and Paraguay).  The BIT with El Salvador only protects investments made after it came into force.

Issue	Distinguishing features in relation to the concept of 'investment'
Territorial coverage	<p>Most of Ecuador's investment instruments expressly state that they cover the entire territory under each State's sovereignty as well as the maritime zones where a State exercises sovereign rights in accordance with international law (Argentina, Bolivia, Brazil, Canada, Chile, Costa Rica, Cuba, Dominican Republic, El Salvador, Germany, Honduras, Italy, Nicaragua, Peru, Romania and Venezuela).</p> <p>Other BITs (France and Finland) simply state that they cover investments of those contracting parties' nationals or companies in Ecuador and investments of Ecuadorian nationals and companies made in such states, without particularising each contracting party's territorial coverage. There has been a discussion regarding the application of the United Kingdom treaty to overseas territories; however, the BIT just refers to nationals of the United Kingdom.</p> <p>The BIT with the United States explicitly provides that the treaty applies to the political subdivisions of the contracting parties.</p>
Accordance with local laws	Ecuador's investment instruments generally provide that an investment must be made in accordance with the national and international laws and regulations of the host State (Germany, Argentina, Bolivia, Brazil, Canada, Chile, China, Costa Rica, Cuba, El Salvador, Spain, France, Honduras, Italy, Nicaragua, Paraguay, Peru, United Kingdom, Dominican Republic, Romania, Sweden, Switzerland, Venezuela, United States).
Change in the form of an investment	Many of Ecuador's investment instruments explicitly clarify that changes in the form of an investment does not affect its status under the treaty, so long as it still satisfies the corresponding definition (Germany, Argentina, Bolivia, Canada, Chile, Costa Rica, El Salvador, United States, Finland, France, Honduras, Italy, Nicaragua, Netherlands, Peru, United Kingdom, Dominican Republic, Romania, Sweden, Venezuela).
Exclusion of certain assets or transaction from the definition	<p>The Canada BIT explicitly excludes '[r]eal estate or other property, tangible or intangible, not acquired in the expectation or used for the purpose of economic benefit or other business purposes'.</p> <p>The Canada BIT also excludes investments in cultural industries, government procurements, government-provided subsidies, rights accorded to the aboriginal peoples of Canada, and foreign aid programmes that aim to promote economic development.</p>

## Substantive protections - any unique or distinguishing features?

### 4 What are the distinguishing features of the fair and equitable treatment standard in this country's investment treaties?

Issue	Distinguishing features of the fair and equitable treatment standard
Illustration of the FET standard	<p>Ecuador's investment instruments (except Brazil, Honduras and Dominican Republic) simply provide that each contracting party shall accord fair and equitable treatment to investments.</p> <p>The BIT with Brazil guarantees that any 'measures affecting investment will be administered in a reasonable, objective, and impartial manner.'</p> <p>The BITs with Honduras and the Dominican Republic refer to 'fair, equitable and favourable conditions' and 'fair and equitable treatment' in their preamble only.</p>
Principles of international law	Some of Ecuador's investment instruments provide that fair and equitable treatment must be ensured in accordance with 'principles of international law' (Canada, France, Venezuela and United States).
Non-impairment	<p>Ecuador's investment instruments impose upon the contracting party an obligation not to impair the management, maintenance, use, enjoyment or disposal of investments through 'unreasonable or discriminatory treatment' / 'arbitrary and discriminatory measures', 'unreasonable or discriminatory measures' (Germany, Argentina, Bolivia, Chile, Costa Rica, Cuba, El Salvador, Finland, Honduras, Italy, Nicaragua, Netherlands, Paraguay, Peru, United Kingdom, Romania, Sweden, Switzerland, Venezuela, Spain, Dominican Republic and United States).</p> <p>The French BIT provides that the right to enjoy fair and equitable treatment must not be hindered in fact or law.<sup>6</sup></p>

[i] The BIT defines such interferences in article 4.

## 5 What are the distinguishing features of the protection against expropriation standard in this country's investment treaties?

Issue	Distinguishing features of the 'expropriation' standard
Indirect expropriation	<p>Most of Ecuador's investment instruments cover indirect expropriations by prohibiting measures 'tantamount to expropriation' (Germany, Argentina, Bolivia, Canada, Chile, China, Costa Rica, Cuba, El Salvador, Spain, Finland, Honduras, Italy, Nicaragua, Paraguay, Peru, United Kingdom, Dominican Republic, Romania and Venezuela). Certain instruments include an explicit reference to 'measures depriving indirectly' or 'expropriated directly or indirectly' (United States, France, Italy, Netherlands, Sweden, Switzerland and Paraguay). The BIT with Brazil explicitly protects direct expropriation.</p>
Conditions for expropriation	<p>Ecuador's investment instruments generally offer protection against expropriation unless the measures are taken in the public interest on a non-discriminatory basis and under due process of law (Argentina, Bolivia, Brazil, Canada, Costa Rica, Cuba, El Salvador, Chile, Spain, Finland, United States, France, Honduras, Italy, Nicaragua, Netherlands, Paraguay, Dominican Republic, Romania, Venezuela, Sweden and Peru). The BITs with Switzerland, Germany, and the United Kingdom refer to the public interest condition but do not explicitly refer to the other two standards of non-discriminatory basis and due process. The BIT with China provides that a legal expropriation requires the following: (i) declaration of public interest, (ii) pursuant to an internal legal process, (iii) without discrimination, and (iv) in exchange of fair compensation. The BIT with United States specifies that expropriation and compensation should follow the international law standards.</p>
Valuation date	<p>Ecuador's investment instruments generally require that the investor be provided with compensation equivalent to the value of the expropriated asset immediately before the expropriation effectively took place or the time in which it was publicly known (whatever is earlier). Only three BITs refer solely to the moment when expropriation took place and omit the time when the expropriation was publicly known (China, Brazil and Switzerland).</p>
Calculation of compensation	<p>Ecuador's investment instruments require that such compensation shall represent fair market value (Finland, United States, Sweden), market value (Honduras, Germany, Argentina, Bolivia, Chile, Cuba, El Salvador, Italy, Nicaragua, United Kingdom, Dominican Republic, Romania, Venezuela), genuine value (Netherlands and Canada), real value (France), fair value (Costa Rica, Peru), commercial value (Paraguay), or value (China, Brazil) of the investment affected.</p>
Prompt, adequate and effective compensation	<p>Ecuador's investment instruments require that the compensation should be prompt, adequate, and effective (Argentina, Bolivia, Canada, Chile, Costa Rica, Cuba, El Salvador, Finland, Honduras, United States, Italy, Nicaragua, Peru, United Kingdom, Dominican Republic, Romania, Sweden, Switzerland, Venezuela), 'fair and adequate' (France), 'effective and adequate' (Switzerland), 'just compensation' (Netherlands and Paraguay), 'immediate, complete and effective' (Italy), 'adequate' (Spain), or fair (China). The BIT with Brazil does not contain a provision regarding the timing and adequacy of compensation. The BIT with Switzerland determines that such compensation should be consistent with the <i>jus gentium</i>. The BIT with China also establishes that the compensation should be paid 'without undue delay'. The Italian BIT adds 'without undue delay and in any case within two months'. Payment shall be transferable and made without delay in a freely convertible currency (China, Brazil, Spain, United States, France, Netherlands, Paraguay, United Kingdom, Romania, Switzerland, Venezuela, Germany, Argentina, Bolivia, Cuba and Honduras).</p>
Interest and applicable period	<p>Such compensation shall include interest depending on the applicable law. If Ecuadorian law is applicable, the interest rates are determined by the Ecuadorian Central Bank, and there is a legal prohibition to apply compound interest. Other BITs determine interest based on the commercial banking rate (Honduras, Germany, and Paraguay), the commercial market rate (Finland, Bolivia, France, Brazil, Peru, Sweden, Argentina, Canada, Chile, Cuba, El Salvador, United States, Nicaragua, United Kingdom, Romania, Venezuela, Netherlands), or the EURIBOR rate at six months from the date of expropriation until the date of payment (Italy). The BIT with Costa Rica determines interest based on the passive commercial rate, but provides that Ecuador will pay interest for the period between the date of expropriation until the effective date of payment, while Costa Rica will pay interest for the period between the date of dispossession and the effective date of payment. The BIT with the Dominican Republic contains no explicit provision on interest.</p>
Review by judicial and administrative authorities	<p>A number of BITs recognise the right to a review by judicial or administrative authority of the legality of expropriation and/or the amount of compensation (Germany, Argentina, Bolivia, Chile, Costa Rica, Canada, El Salvador, Finland, United States, France, Honduras, Italy, Nicaragua, Peru, Dominican Republic, Venezuela, United Kingdom, Romania).</p>
Links with other protections	<p>The BIT with Germany determines that the most-favoured-nation treatment shall apply to the section of expropriation. The BIT with Italy provides that if the investor and the responsible authority fail to reach an agreement on the amount of compensation, such amount will be determined pursuant to the procedures for the resolution of disputes between the contracting party and investors provided by the treaty.</p>

## 6 What are the distinguishing features of the national treatment/most-favoured-nation treatment standard in this country's investment treaties?

Issue	Distinguishing features of the 'expropriation' standard
Indirect expropriation	<p>Most of Ecuador's investment instruments cover indirect expropriations by prohibiting measures 'tantamount to expropriation' (Germany, Argentina, Bolivia, Canada, Chile, China, Costa Rica, Cuba, El Salvador, Spain, Finland, Honduras, Italy, Nicaragua, Paraguay, Peru, United Kingdom, Dominican Republic, Romania and Venezuela).</p> <p>Certain instruments include an explicit reference to 'measures depriving indirectly' or 'expropriated directly or indirectly' (United States, France, Italy, Netherlands, Sweden, Switzerland and Paraguay). The BIT with Brazil explicitly protects direct expropriation.</p>
Conditions for expropriation	<p>Ecuador's investment instruments generally offer protection against expropriation unless the measures are taken in the public interest on a non-discriminatory basis and under due process of law (Argentina, Bolivia, Brazil, Canada, Costa Rica, Cuba, El Salvador, Chile, Spain, Finland, United States, France, Honduras, Italy, Nicaragua, Netherlands, Paraguay, Dominican Republic, Romania, Venezuela, Sweden and Peru). The BITs with Switzerland, Germany, and the United Kingdom refer to the public interest condition but do not explicitly refer to the other two standards of non-discriminatory basis and due process.</p> <p>The BIT with China provides that a legal expropriation requires the following: (i) declaration of public interest, (ii) pursuant to an internal legal process, (iii) without discrimination, and (iv) in exchange of fair compensation.</p> <p>The BIT with United States specifies that expropriation and compensation should follow the international law standards.</p>
Valuation date	<p>Ecuador's investment instruments generally require that the investor be provided with compensation equivalent to the value of the expropriated asset immediately before the expropriation effectively took place or the time in which it was publicly known (whatever is earlier). Only three BITs refer solely to the moment when expropriation took place and omit the time when the expropriation was publicly known (China, Brazil and Switzerland).</p>
Calculation of compensation	<p>Ecuador's investment instruments require that such compensation shall represent fair market value (Finland, United States, Sweden), market value (Honduras, Germany, Argentina, Bolivia, Chile, Cuba, El Salvador, Italy, Nicaragua, United Kingdom, Dominican Republic, Romania, Venezuela), genuine value (Netherlands and Canada), real value (France), fair value (Costa Rica, Peru), commercial value (Paraguay), or value (China, Brazil) of the investment affected.</p>
Prompt, adequate and effective compensation	<p>Ecuador's investment instruments require that the compensation should be prompt, adequate, and effective (Argentina, Bolivia, Canada, Chile, Costa Rica, Cuba, El Salvador, Finland, Honduras, United States, Italy, Nicaragua, Peru, United Kingdom, Dominican Republic, Romania, Sweden, Switzerland, Venezuela), 'fair and adequate' (France), 'effective and adequate' (Switzerland), 'just compensation' (Netherlands and Paraguay), 'immediate, complete and effective' (Italy), 'adequate' (Spain), or fair (China). The BIT with Brazil does not contain a provision regarding the timing and adequacy of compensation. The BIT with Switzerland determines that such compensation should be consistent with the <i>jus gentium</i>. The BIT with China also establishes that the compensation should be paid 'without undue delay'. The Italian BIT adds 'without undue delay and in any case within two months'.</p> <p>Payment shall be transferable and made without delay in a freely convertible currency (China, Brazil, Spain, United States, France, Netherlands, Paraguay, United Kingdom, Romania, Switzerland, Venezuela, Germany, Argentina, Bolivia, Cuba and Honduras).</p>
Interest and applicable period	<p>Such compensation shall include interest depending on the applicable law. If Ecuadorian law is applicable, the interest rates are determined by the Ecuadorian Central Bank, and there is a legal prohibition to apply compound interest.</p> <p>Other BITs determine interest based on the commercial banking rate (Honduras, Germany, and Paraguay), the commercial market rate (Finland, Bolivia, France, Brazil, Peru, Sweden, Argentina, Canada, Chile, Cuba, El Salvador, United States, Nicaragua, United Kingdom, Romania, Venezuela, Netherlands), or the EURIBOR rate at six months from the date of expropriation until the date of payment (Italy).</p> <p>The BIT with Costa Rica determines interest based on the passive commercial rate, but provides that Ecuador will pay interest for the period between the date of expropriation until the effective date of payment, while Costa Rica will pay interest for the period between the date of dispossession and the effective date of payment.</p> <p>The BIT with the Dominican Republic contains no explicit provision on interest.</p>
Review by judicial and administrative authorities	<p>A number of BITs recognise the right to a review by judicial or administrative authority of the legality of expropriation and/or the amount of compensation (Germany, Argentina, Bolivia, Chile, Costa Rica, Canada, El Salvador, Finland, United States, France, Honduras, Italy, Nicaragua, Peru, Dominican Republic, Venezuela, United Kingdom, Romania).</p>
Links with other protections	<p>The BIT with Germany determines that the most-favoured-nation treatment shall apply to the section of expropriation.</p> <p>The BIT with Italy provides that if the investor and the responsible authority fail to reach an agreement on the amount of compensation, such amount will be determined pursuant to the procedures for the resolution of disputes between the contracting party and investors provided by the treaty.</p>

**7 What are the distinguishing features of the obligation to provide protection and security to qualifying investments in this country's investment treaties?**

Issue	Distinguishing features of the 'protection and security' standard
Scope	The formulation of the standard varies in Ecuador's investment instruments. Some provide for 'full protection and security' (Germany, Canada, Finland, United States, France, Netherlands, United Kingdom), 'full legal protection' (Argentina, Bolivia, Chile, Costa Rica, El Salvador, Nicaragua, Rumania, Venezuela), 'full and constant protection and security' (Finland), or 'full protection' (Sweden and Honduras). Others simply require a contracting party to 'protect' the investments (China, Spain, Paraguay, Dominican Republic and Switzerland).

**8 What are the distinguishing features of the umbrella clauses contained within this country's investment treaties?**

Issue	Distinguishing features of any 'umbrella clause'
Scope	A more limited number of Ecuador's investment instruments provides an umbrella clause (Germany, United States, Italy, Netherlands, Paraguay, United Kingdom and Sweden).

**9 What are the other most important substantive rights provided to qualifying investors in this country?**

Issue	Other substantive protections
Compensation in case of armed conflict/civil unrest	Ecuadorian investment instruments guarantee investors of contracting parties most favoured nation and national treatment with regard to compensation paid in the case of armed conflict or civil unrest (Germany, Argentina, Bolivia, Brazil, Canada, Chile, Costa Rica, Cuba, El Salvador, Finland, France, Honduras, Italy, Nicaragua, United States, United Kingdom, Dominican Republic, Sweden, Venezuela, Netherlands, Paraguay, Peru and Romania). The BITs with China and Spain only refer generally to the most-favoured-nation treatment, whereas the Peruvian BIT refers solely to national treatment.
Free transfer of payments	Most Ecuadorian investment instruments contain a provision that requires the contracting party to allow investors to transfer investments and investment returns freely (Germany, Argentina, Bolivia, Brazil, Canada, China, Chile, Costa Rica, El Salvador, Spain, Finland, France, Italy, Nicaragua, Netherlands, Peru, United Kingdom, Sweden, Venezuela and Switzerland). Ecuador's BITs with Bolivia, Cuba, Honduras, Dominican Republic, Spain and Romania allow free transfer of payments provided that the capital is registered and payment of applicable taxes has been duly made. Some of Ecuador's investment instruments further stipulate that the transfers shall be made 'without delay' (Germany, Argentina, Brazil, Canada, Chile, Costa Rica, El Salvador, Finland, France, Italy, Netherlands, Peru, United Kingdom, Sweden, Venezuela, Paraguay and Romania). BITs with Germany, Chile and Spain define 'without delay' as 'two months, commencing on the date on which the relevant request has been forwarded to the competent authorities'. The BIT with Germany further provides that the rate of exchange of currency should be in accordance with the regulation of the International Monetary Fund. Other BITs provide for the application of the exchange rate of the contracting party in whose territory the investment is situated (Argentina, Bolivia, Chile, China, Costa Rica, Cuba, Honduras, Nicaragua, Dominican Republic and Sweden). The BIT with Brazil contains situations when a party is explicitly allowed to block payment transfers.
Transparency	Certain of Ecuador's BITs provide that parties shall seek to facilitate the provision and exchange of investment information and/or shall make public its laws, regulations, administrative practices and procedures, and adjudicatory decisions that affect investments (Bolivia, Brazil, Canada, Finland, Honduras, United States, Peru, Dominican Republic, Sweden, Romania).
Most favourable treatment	Certain of Ecuador's BITs provide that if the provisions of law of a contracting party or obligations under international law entitle investments made by investors of the other contracting party to a treatment more favourable than the one provided by the BIT, such provisions shall, to the extent that they are more favourable to the investor, prevail over the treaty (Germany, Argentina, Bolivia, Brazil, China, Chile, Costa Rica, Cuba, Dominican Republic, El Salvador, France, Finland, Honduras, Italy, Nicaragua, Netherlands, United States).
Treaty application	The BITs with Canada and the United States determine that the treaties must be applied in accordance with the measures necessary for the maintenance of public order, international peace or security, and environmental concerns. The BIT with Brazil has a similar provision, which adds the protection of financial systems and institutions, human rights, health, and corporate social responsibility. The BIT with Paraguay determines that it must not impede the parties' use of measures for public or international security.

Issue	Other substantive protections
Performance requirements	The BITs with Dominican Republic, Costa Rica, Finland, Canada, Honduras, and the United States determine that contracting parties may not impose obligations on investors to conduct their business in a prescribed manner. The BIT with Paraguay explicitly allows parties to create 'special formalities' with regards to the establishment of investments as long as they do not impair the rights established in the BIT.
Taxation measures	Generally, Ecuador's investment instruments do not apply to taxation measures. Ecuador's BITs provide that a contracting party may not be compelled to extend to investors of the other party any treatment or privilege resulting from an agreement on international taxation (Germany, Argentina, Brazil, Bolivia, Canada, Chile, China, Costa Rica, Cuba, Spain, United States, Finland, France, Honduras, Italy, Nicaragua, Paraguay, Peru, United Kingdom, Dominican Republic, Romania, Sweden, Venezuela). Other BITs also determine that in the event of any inconsistency between the provisions of the investment agreement and any tax convention, the tax convention applies (Brazil, Canada, Dominican Republic, Netherlands, United States). Finally, other investment instruments distinguish claims for breach of tax conventions from claims for breach of BITs in connection with a taxation measure (United States, Canada, Netherlands and Dominican Republic).

## 10 Do this country's investment treaties exclude liability through carve-outs, non-precluded measures clauses, or denial of benefits clauses?

Issue	Other substantive protections
Subject matter exclusions	Most Ecuadorian investment instruments exclude certain matters from its scope (Canada, Finland, Italy, Netherlands, United Kingdom, United States). For example, the BIT with Canada excludes matters relating to aviation, telecommunications and transportation, fisheries, maritime matters and financial services. Various investment instruments also include exclusions for environmental measures and other measures to protect human, animal or plant life or health.
Taxation measures	Most Ecuadorian investment instruments include a limited carve-out for taxation measures. In many cases, this provides for a particular process to be followed before a claim relating to a tax measure can be brought under the treaty. For example, in certain investment instruments, a claim cannot be brought under the treaty unless the tax authorities of the contracting States fail to reach a determination in respect of the impugned measures within a specified time (usually six months) (eg, Canada).

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## Procedural rights in this country's investment treaties

### 11 Are there any relevant issues related to procedural rights in this country's investment treaties?

Issue	Procedural rights
State-to-state arbitration	All Ecuadorian investment instruments contain arbitration clauses for the settlement of disputes arising from their application between the contracting parties. Such arbitration clauses determine that any dispute shall be settled by negotiations between the governments of the two contracting parties. If the parties are unable to reach a settlement within six months, following the date on which such negotiations were requested, they can submit the dispute to an arbitral tribunal (Germany, Argentina, Bolivia, Canada, China, Chile, Costa Rica, Cuba, El Salvador, Spain, Finland, Honduras, Italy, Nicaragua).

Issue	Procedural rights
Fork-in-the-road and waiver of local remedies	<p>Some Ecuadorian investment instruments include the 'Fork in the Road' clause, which provides that the investor must choose between the litigation of its claims in the hosts State's domestic courts or international arbitration, and that the choice, once it has been made, is final (Argentina, Bolivia, Chile, China, Costa Rica, Cuba, El Salvador, Nicaragua, Peru, Venezuela and Romania).</p> <p>The BIT with Germany provides that when the foreign investor has submitted the dispute to the courts of the other contracting state, the investor is entitled to refer the dispute to an arbitral tribunal (i) if the court has not decided on the merits in 18 months, and (ii) if the court's decision violates the provisions contained in the BIT.</p> <p>The BIT with China determines a specific procedure to solve conflict related to the amount of compensation in expropriation cases.</p> <p>The BIT with Finland provides that an investor who has previously submitted the dispute to national jurisdiction may initiate a case before an arbitral tribunal if the investor renounces pursuing the case in the national courts before the arbitration award is rendered.</p>
Cooling-off period. Notice period	<p>The cooling-off period provided by Ecuadorian investment instruments is six months.</p>
Local courts, ICSID or ad hoc arbitration	<p>Some Ecuadorian investment instruments grant the investor the possibility to submit the dispute to local courts (Germany, Argentina, Bolivia, Chile, China, Costa Rica, Cuba, El Salvador, Finland, Honduras, Italy, Nicaragua, Paraguay, Peru, Romania, Venezuela, United States and Netherlands).</p> <p>Where the other contracting party is a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), Ecuadorian BITs routinely provide for ICSID arbitration (Germany, Argentina, Bolivia, Canada, Dominican Republic, Chile, Costa Rica, El Salvador, Spain, France, Finland, Honduras, Italy, Nicaragua, Paraguay, Peru, Romania, United Kingdom, Sweden, United States, Venezuela, and Netherlands). If the other contracting party is not a signatory to the ICSID Convention, some treaties provide for international arbitration according to the ICSID Additional Facility Rules (Romania, Costa Rica, Argentina, United States, Canada and Venezuela).</p> <p>Many investment instruments provide for international ad hoc arbitration (Paraguay, United States, Germany, Netherlands, Finland and China).</p> <p>Some investment instruments also allow investors to pursue an arbitration claim through ad hoc tribunals constituted in accordance with United Nations Commission On International Trade Law (UNCITRAL) Rules (Argentina, Bolivia, Canada, Costa Rica, Cuba, Spain, Finland, Honduras, Romania, Sweden, United States, Venezuela, Paraguay, Italy and Netherlands).</p>
Applicable law	<p>According to certain of Ecuador's investment instruments, the tribunal shall decide the law of the contracting party, applying rules on conflict of laws and the terms of any specific agreement concluded in relation to investment and the principles of international law on the subject ( Bolivia, Chile, El Salvador, Spain, China, Cuba, Honduras and Nicaragua).</p>

## 12 What is the approach taken in this country's investment treaties to standing dispute resolution bodies, bilateral or multilateral?

No BIT of Ecuador provides for standing dispute resolution body.

## 13 What is the status of this country's investment treaties?

In 2008, Ecuador withdrew from the BITs with Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Dominican Republic, Uruguay, and Romania. In 2010, Ecuador terminated the BIT with Finland. Some BITs included survival provisions. Those treaties will not have an immediate effect with respect to investments made prior to such termination, the treaties shall thereafter continue to be effective for a further period of 10 years (El Salvador, Nicaragua, Paraguay, Romania) or five years (Dominican Republic) from such date of termination.

The termination process is still pending for the BITs entered into with Germany, Argentina, Bolivia, Canada, Spain, United States, France, Italy, Peru, United Kingdom, Sweden, Switzerland, Venezuela, Chile, China and Netherlands. Until the withdrawal process of each of these treaties is not completed, and until Ecuador officially notifies the unilateral termination of the BIT to the corresponding contracting party, these treaties remain in force.

The BITs with Costa Rica and Russia never entered into force.

## Practicalities of commencing an investment treaty claim against this country

- 14 To which governmental entity should notice of a dispute against this country under an investment treaty be sent? Is there a particular person or office to whom a dispute notice against this country should be addressed?

<b>Government entity to which claim notices are sent</b>	A notice of a dispute against Ecuador pursuant to an investment treaty's arbitration clause should be sent to the office of the Attorney General of Ecuador. Currently, the Ecuadorian Attorney General is Mr Íñigo Salvador Crespo. <sup>7</sup> The address of this entity is Av. Amazonas N39-123 y Arízaga, Quito Ecuador; and the phone number is +593 2 2941300.
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- 15 Which government department or departments manage investment treaty arbitrations on behalf of this country?

<b>Government department that manages investment treaty arbitrations</b>	Under Ecuadorian law, the Attorney General represents the state in disputes before arbitral tribunals. <sup>8</sup> In addition, the Attorney General's office has a National Department of International Affairs and Arbitration headed by a Director who supervises the representation of the State and Ecuadorian public entities. <sup>9</sup>
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- 16 Are internal or external counsel used, or expected to be used, by the state in investment treaty arbitrations? If external counsel are used, does the state normally go through a formal public procurement process when hiring them?

<b>Internal/external counsel</b>	The Director of International Affairs manages the hiring of private attorneys when matters require specialist knowledge or experience. <sup>10</sup> The Attorney General makes the final decision. <sup>11</sup> In 2019, the National Directorate of International Affairs and Arbitration reported that it adopted policies aimed at reducing the expenses generated by the international representation of the state, for which it assumed the responsibility of actively participating in the development of international arbitration processes. <sup>12</sup>
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## Practicalities of enforcing an investment treaty claim against this country

- 17 Has the country signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)? Please identify any legislation implementing the Washington Convention.

<b>Washington Convention implementing legislation</b>	On 16 July 2021, Ecuador ratified the 1966 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). The treaty entered into force with respect to Ecuador on 3 September 2021, one month after Ecuador deposited the instrument of ratification with the World Bank. This is the second time that Ecuador has ratified the ICSID Convention, since it ratified it for the first time being in 1986. However, in 2009, Ecuador denounced such treaty and withdrew from it. As a result, it ceased to be a party to the International Centre for Settlement of Investment Disputes (ICSID) until it ratified and registered the treaty again, as explained in the paragraph above. <sup>13</sup>
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**18 Has the country signed and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention)? Please identify any legislation implementing the New York Convention.**

<b>New York Convention</b>	<p>Ecuador was an early signatory of the New York Convention, which entered into force for Ecuador on 3 April 1962. Ecuador ratified the New York Convention with reference to the reservations set out in article II(3), meaning that Ecuador will apply the Convention to the recognition and enforcement of arbitral awards made in the territory of another contracting state only if such awards have been made with respect to differences arising out of legal relationships which are regarded as commercial under Ecuadorian law.<sup>14</sup></p> <p>The rules for recognising and enforcing international arbitration awards are set out in the Arbitration and Mediation Law (AML) and its new Regulations.<sup>15</sup> Article 42 of AML provides that awards issued in an international arbitration proceeding shall have the same effect and shall be enforced in the same manner as awards issued in a domestic arbitration proceeding.<sup>16</sup> Domestic arbitration awards can be enforced before the lower civil court with jurisdiction over the home of the respondent/losing party or any place where they have assets capable of being seized.<sup>17</sup> This provision is in harmony with Article III of the New York Convention and confirms that the ‘exequatur’ process is no longer needed.<sup>18</sup></p> <p>Moreover, the party against whom an international award is being enforced may only challenge the enforcement action if it provides proof of payment or if they prove that the award has been suspended or set aside by a competent authority. Also, Ecuadorian judges will reject and sanction any attempt by a party looking to obstruct the enforcement process.<sup>19</sup></p>
<b>New York Convention implementing legislation</b>	

**19 Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?**

<b>Legislation governing non-ICSID arbitrations</b>	<p>Yes. Ecuador’s AML and its new Regulations<sup>20</sup> are an evolving<sup>21</sup> legal regime governing arbitral proceedings.<sup>22</sup></p> <p>The Regulations provide that the State of Ecuador and public sector entities (as defined in the Ecuadorian Constitution)<sup>23</sup> may resort to domestic or international arbitration either by entering into an arbitration agreement (which can be done before or after a dispute arises) or when permitted to do so by law or treaty.<sup>24</sup> If the arbitration agreement is entered into after the dispute arises or international arbitration proceedings commence, the arbitration agreement needs to be approved by Ecuador’s Attorney General. The Regulations further clarify that when a dispute is referred to arbitration, the arbitral tribunal will have exclusive jurisdiction to resolve any disputes about the facts (including any legally operative acts) or administrative actions related to the dispute.<sup>25</sup></p> <p>If an arbitration agreement has not been included in a contract entered into with a public entity, the other party may request that the entity agree to arbitrate. If the public entity does not respond, then the arbitration agreement will be deemed as accepted.<sup>26</sup></p>
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**20 Does the state have a history of voluntary compliance with adverse investment treaty awards; or have additional proceedings been necessary to enforce these against the state?**

<b>Compliance with adverse awards</b>	<p>Ecuador has complied with all arbitral awards issued against it. The Attorney General’s Office has made public assurances that Ecuador respects the international legal system and honors its commitments, a fact demonstrated by the full compliance it has historically given to international judgments and awards.<sup>27</sup> By 2018, Ecuador had paid US\$2.313 million to satisfy arbitral awards issued against it.<sup>28</sup></p>
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## 21 Describe the national government's attitude towards investment treaty arbitration

<b>Attitude of government towards investment treaty arbitration</b>	<p>The Ecuadorian government has had an unstable and unpredictable relationship with investment treaties. The President serving from 2007 to 2017, Rafael Correa, was a fierce opponent of BITs.<sup>29</sup> However, Correa's successor, Lenín Moreno, who came from the same party as Correa, commence new investment treaty negotiations.<sup>30</sup></p> <p>Moreno's government was replaced by conservative Guillermo Lasso, who has continued Moreno's pro-BIT position.<sup>31</sup> Lasso's government has focused on reenergising the economy and implementing measures to encourage investment, including foreign investment. These efforts include: (i) resigned the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention);<sup>32</sup> (ii) pursuing significant new BITs;<sup>33</sup> (iii) issuing Executive Decree No. 165-2021, introducing the Regulations to the Arbitration and Mediation Law to improve the existing legal framework for arbitration; and (iv) seeking to issue further legislation to promote foreign investment.<sup>34</sup></p> <p>However, there is political opposition to Lasso's work on the matter,<sup>35</sup> and it is difficult to predict the political future of BITs concluded with Ecuador. A critical obstacle to Ecuador entering into new BITs is article 422 of the Ecuadorian Constitution which prohibits 'treaties or international instruments where the Ecuadorian State yields its sovereign jurisdiction to international arbitration entities in disputes involving contracts or trade between the State and natural persons or legal entities.'<sup>36</sup> The Transitory Constitutional Court has ruled that the dispute resolution provisions of these BITs contravene this article.<sup>37</sup> The topic remains a live legal discussion in the country.</p> <p>Moreover, on 4 July 2018, Ecuador officially requested to be considered a Pacific Alliance Partner State,<sup>38</sup> which includes arbitration as a settlement mechanism for investor-state disputes.</p>
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## 22 To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

<b>Attitude of local courts towards investment treaty arbitration</b>	<p>No cases seeking enforcement of an international award arising from investment treaty arbitration has been filed before Ecuadorean courts.</p> <p>The Arbitration and Mediation Law establishes the principle of priority of arbitration over ordinary operation of the court system and the principle of <i>in dubio pro arbitration</i>.<sup>39</sup></p> <p>The National Court of Justice has recognised in different resolutions that the cases in which arbitration derives from the judicial function are exceptions and must be expressly established in the law. It also confirmed that an action for nullifying an arbitration award is governed by restrictive rules, considering that one of the objectives of arbitration is increased speed in dispute resolution. Accordingly, it ruled that there is no appeal against the decision to nullify the award.<sup>40</sup></p>
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## National legislation protecting inward investments

### 23 Is there any national legislation that protects inward foreign investment enacted in this country? Describe the content.

In 2010, the Ecuadorian Congress enacted the Organic Code of Production, Trade and Investment, a law meant to create incentives and attract foreign investment. The safeguards created by the law resemble the ones contained in BITs. For example, the investors are guaranteed non-discrimination and full protection and security; the caveat is that both guarantees are measured only against a national standard. No case attempting to enforce these rights has been filed before Ecuadorian courts.

The recently enacted Law on Production Incentives and Tax Fraud Prevention makes it possible to both grant a ten-year exemption from income tax to companies operating in basic industries (this concept is left undefined) and include tax stabilisation clauses in investment contracts.

National legislation	Substantive protections			Procedural rights	
	FET	Expropriation	Other	Local courts	Arbitration
Organic Code of Production, Trade and Investment, COPCI <sup>41</sup>	No <sup>41</sup>	Yes, it prohibits the confiscation of investors' property. <sup>43</sup>	Prohibits arbitrary or discriminatory measures. Guarantees national treatment. Guarantees full protection and security. <sup>44</sup>	Yes <sup>45</sup>	Yes <sup>46</sup>

## National legislation protecting outgoing foreign investment

24 Does the country have an investment guarantee scheme or offer political risk insurance that protects local investors when investing abroad? If so, what are the qualifying criteria, substantive protections provided and the means by which an investor can invoke the protections?

Relevant guarantee scheme	No. Ecuador has not created any scheme to protect local investors when investing abroad.
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## Awards

25 Please provide a list of any available arbitration awards or cases initiated involving this country's investment treaties.

Awards	Instrument(s) invoked	Decisions
Case		
<i>IBM World Trade Corporation v Republic of Ecuador</i> , ICSID Case No. ARB/02/10.	BIT Ecuador–United States.	Award embodying the Parties' Settlement, 22 July 2004. <sup>47</sup>
<i>Repsol YPF Ecuador SA v Empresa Estatal Petróleos del Ecuador (Petroecuador)</i> , ICSID Case No. ARB/01/10.	BIT Ecuador–Spain.	Award, 20 February 2004. <sup>48</sup> Decision on Annulment, 8 January 2007 <sup>49</sup>
<i>M.C.I. Power Group LC and New Turbine, Inc. v Republic of Ecuador</i> , ICSID Case No. ARB/03/6.	BIT Ecuador–United States.	Award, 31 July 2007 <sup>50</sup> Decision on Annulment, 19 October 2009 <sup>51</sup>
<i>Duke Energy Electroquil Partners &amp; Electroquil SA v Republic of Ecuador</i> , ICSID Case No. ARB/04/19.	BIT Ecuador–United States.	Award, 18 August 2008 <sup>52</sup>
<i>Empresa Eléctrica del Ecuador Inc. v Republic of Ecuador</i> , ICSID Case No. ARB/05/9.	BIT Ecuador–United States.	Award, 2 June 2009 <sup>53</sup>
<i>Noble Energy Inc. and Machalapower Cia Ltda v The Republic of Ecuador and Consejo Nacional de Electricidad</i> , ICSID Case No. ARB/05/12.	BIT Ecuador–United States.	Decision on jurisdiction, 5 March 2005. <sup>54</sup> Last decision: Order of the Tribunal taking note of the discontinuance of the proceedings, 20 May 2009.
<i>Técnicas Reunidas, SA and Eurocontrol, SA v Republic of Ecuador</i> , ICSID Case No. ARB/06/17.	BIT Ecuador–Spain.	Order issued by the Acting Secretary-General taking note of the discontinuance of the proceedings, 13 May 2008.
<i>City Oriente Limited v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)</i> , ICSID Case No. ARB/06/21.	Hydrocarbons production share contract containing an ICSID arbitration clause.	Order of the Arbitral Tribunal taking note of the discontinuance of the proceedings, 12 September 2008 <sup>55</sup>
<i>Murphy Exploration and Production Company International v Republic of Ecuador</i> , ICSID Case No. ARB/08/4.	BIT Ecuador–United States.	Award on jurisdiction, 15 December 2010 <sup>56</sup>
<i>Repsol YPF Ecuador SA and others v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)</i> , ICSID Case No. ARB/08/10.	BIT Ecuador–Spain.	Order of the Arbitral Tribunal taking note of the discontinuance of the proceedings, 9 February 2011. <sup>57</sup>
<i>Corporación Quiport SA and others v Republic of Ecuador</i> , ICSID Case No. ARB/09/23.	Various BITs.	Order of the Secretary-General taking note of the discontinuance of the proceedings, 11 November 2011 <sup>58</sup>
<i>Ulysseas, Inc v The Republic of Ecuador</i> , UNCITRAL(PCA).	BIT Ecuador–United States.	Award, 12 June 2012 <sup>59</sup>
<i>Occidental Exploration and Production Company v The Republic of Ecuador</i> , LCIA Case No. UN3467.	BIT Ecuador–United States.	Award, 1 July 2004 <sup>60</sup>

Awards		
Case	Instrument(s) invoked	Decisions
<i>EnCana Corporation v Republic of Ecuador</i> , LCIA Case No. UN3481, UNCITRAL (formerly <i>EnCana Corporation v Government of the Republic of Ecuador</i> ).	BIT Ecuador–Canada	Award, 3 February 200661
<i>Chevron Corporation and Texaco Petroleum Company v The Republic of Ecuador</i> , UNCITRAL (PCA Case No. 34877 2007-2).	BIT Ecuador–United States	Award, 31 August 201162
<i>Únete Telecomunicaciones SA and Clay Pacific SRL v. the Republic of Ecuador</i> , UNCITRAL.	BIT Ecuador–Bolivia	Order of the Arbitral Tribunal taking note of the discontinuance of the proceedings, 7 August 201363
<i>Republic of Ecuador v United States of America</i> (PCA Case No. 2012-5).	BIT Ecuador–United States	Award, 29 September 201264
<i>Occidental Petroleum Corporation and Occidental Exploration and Production Company v The Republic of Ecuador</i> , ICSID Case No. ARB/06/11.	BIT Ecuador–United States	Award, 5 October 201265 Decision on Annulment, 2 November 201566
<i>Murphy Exploration &amp; Production Company –International v The Republic of Ecuador</i> , UNCITRAL, PCA Case No. AA434.	BIT Ecuador–United States	Award, 10 February 201767
<i>Perenco Ecuador Ltd v The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)</i> , ICSID Case No. ARB/08/6.	BIT Ecuador–France.	Award, 27 September 201968
Pending proceedings		
<i>Chevron Corporation and Texaco petroleum Corporation v Republic of Ecuador</i> (UNCITRAL) (PCA Case No. 2009-23).	BIT Ecuador–United States.	First Partial Award, 17 September 201369
<i>Merck Sharpe &amp; Dohme (IA) Corporation v The Republic of Ecuador</i> , UNCITRAL, PCA.	BIT Ecuador–United States.	Pending <sup>70</sup>
<i>Copper Mesa v Republic of Ecuador</i> , PCA Case No.2012-02.	BIT Ecuador–Canada.	Pending <sup>71</sup>
<i>Burlington Resources Inc v Republic of Ecuador</i> , ICSID Case No. ARB/08/5 (formerly <i>Burlington Resources Inc and others v The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador)</i> ).	BIT Ecuador–United States.	Decision on liability, 14 December 2012. Pending: the Tribunal will move to the damages phase <sup>72</sup>
<i>Worley Parsons International, Inc. v. Republic of Ecuador</i> .	BIT Ecuador–United States.	Pending <sup>73</sup>

## Reading List

### 26 Please provide a list of any articles or books that discuss this country's investment treaties.

Article/Book
Andrés Larrea, Enforcing International Arbitral Awards in Ecuador After Recent Legal Reforms: Is This the End of the Exequatur Process?, Kluwer Arb. Blog (17 May 2020), <a href="http://arbitrationblog.kluwerarbitration.com/2020/05/17/enforcing-international-arbitral-awards-in-ecuador-after-recent-legal-reforms-is-this-the-end-of-the-exequatur-process/#:~:text=In%202015%2C%20Ecuador%20changed%20its,in%202018%20repealed%20this%20requirement.">http://arbitrationblog.kluwerarbitration.com/2020/05/17/enforcing-international-arbitral-awards-in-ecuador-after-recent-legal-reforms-is-this-the-end-of-the-exequatur-process/#:~:text=In%202015%2C%20Ecuador%20changed%20its,in%202018%20repealed%20this%20requirement.</a>
Andrés Larrea, The Wait is Over: Ecuador Enacts Regulations to its Arbitration and Mediation Law, Kluwer Arb. Blog (1 September 2021), <a href="http://arbitrationblog.kluwerarbitration.com/2021/09/01/the-wait-is-over-ecuador-enacts-regulations-to-its-arbitration-and-mediation-law/#:~:text=Latin%20America%2C%20regulation-,The%20Wait%20is%20Over%3A%20Ecuador%20Enacts%20Regulations,its%20Arbitration%20and%20Mediation%20Law&amp;text=Ecuador%C2%B4s%20Arbitration%20and,with%20regulations%20until%20August%202021.">http://arbitrationblog.kluwerarbitration.com/2021/09/01/the-wait-is-over-ecuador-enacts-regulations-to-its-arbitration-and-mediation-law/#:~:text=Latin%20America%2C%20regulation-,The%20Wait%20is%20Over%3A%20Ecuador%20Enacts%20Regulations,its%20Arbitration%20and%20Mediation%20Law&amp;text=Ecuador%C2%B4s%20Arbitration%20and,with%20regulations%20until%20August%202021.</a>
Andrés Larrea, Ecuador's Constitutional Court Rules in Favor of Ratification of the ICSID Convention, Kluwer Arb. Blog (30 July 2021), <a href="http://arbitrationblog.kluwerarbitration.com/2021/07/30/ecuadors-constitutional-court-rules-in-favor-of-ratification-of-the-icsid-convention/">http://arbitrationblog.kluwerarbitration.com/2021/07/30/ecuadors-constitutional-court-rules-in-favor-of-ratification-of-the-icsid-convention/</a> .
Ari MacKinnon et al., Ecuador Re-Ratifies The ICSID Convention: Impact Of The Ratification In Ecuador And In The Region, Cleary Gottlieb (9 August 2021), <a href="https://www.clearygottlieb.com/-/media/files/alert-memos-2021/ecuador-re-ratifies-the-icsid-convention.pdf">https://www.clearygottlieb.com/-/media/files/alert-memos-2021/ecuador-re-ratifies-the-icsid-convention.pdf</a> .
Ecuador begins talks over new BITs, <i>Glob Arb Rev</i> (23 February 2018), <a href="https://globalarbitrationreview.com/article/ecuador-begins-talks-over-new-bits.">https://globalarbitrationreview.com/article/ecuador-begins-talks-over-new-bits.</a>

## Article/Book

Daniel Finn & Guillaume Long, Lenín Moreno Has Betrayed Ecuador. Now the Country Is in Revolt., Jacobin (17 October 2019), <https://jacobin.com/2019/10/ecuador-protests-lenin-moreno-correa-imf>.

Daniela Páez-Salgado & Emily Westphalen, Ecuador Signs the ICSID Convention: Next Steps for Entry Into Force, Kluwer Arb. Blog (30 June 2021), <http://arbitrationblog.kluwerarbitration.com/2021/06/30/ecuador-signs-the-icsid-convention-next-steps-for-entry-into-force/>.

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## Note

[1] The authors thank Libna Macías for her research assistance and thoughtful contributions in the preparation of this publication[2] While not all BITs provide for ISDS, all treaties provide for state-to-state arbitration.

[3] Article XIII(3)(b) states that '[a]n investor may submit a dispute as referred to in paragraph (1) to arbitration in accordance with paragraph (4) only if: [...] (b) the investor has waived its right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the contracting party concerned or in a dispute settlement procedure of any kind'.

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[5] Andean Subregional Integration Agreement (Cartagena Agreement), 26 May 1969, 8 I.L.M. 910, <https://www.produccion.gob.ec/wp-content/uploads/2019/05/Acuerdo-de-Cartagena.pdf>.

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[6] The BIT defines such interferences in article 4.

[7] See Íñigo Salvador Crespo, Procurador General del Estado, Office of The State Attorney General, Republic Of Ecuador, <http://www.pge.gob.ec/index.php/2014-06-20-06-34-58/2014-09-29-16-21-51#:~:text=%C3%8D%C3%B1igo%20Salvador%20Crespo,Procurador%20General%20del%20Estado&text=Es%20Doctor%20en%20Jurisprudencia%20por%20la%20Pontificia%20Universidad%20Cat%C3%B3lica%20del%20Ecuador>.

[8] See Statutory Law of the Attorney General's Office article 5 (13 April 2004) (Ecuador), [http://www.pge.gob.ec/images/2022/Marco\\_Legal/ECLEX](http://www.pge.gob.ec/images/2022/Marco_Legal/ECLEX).

- [9] See Statutory Law of the Attorney General's Office article 26 [13 April 2004] [Ecuador], [http://www.pge.gob.ec/images/2022/Marco\\_Legal/ECLEX](http://www.pge.gob.ec/images/2022/Marco_Legal/ECLEX).
- [10] See, Organizational Operating Regulations of the Attorney General's Office article 27.10, Resolution No. 107 [13 July 2017], <http://www.pge.gob.ec/images/documentos/reglamento>.
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- [16] See Mediation and Arbitration Law article 42, Official Reg. No. 417 [26 November 2006] <https://www.funcionjudicial.gob.ec/www/pdf/mediacion/Ley>.
- [17] See Regulations article 14 <https://www.fielweb.com/reglamento.pdf>.
- [18] See New York Convention <https://www.newyorkconvention.org/spanish>.
- [19] See Regulations to the Mediation and Arbitration Law article 15, Executive Decree No. 165-2021 [18 August 2021], <https://www.fielweb.com/reglamento.pdf>.
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- [21] Andrés Larrea, *The Wait is Over: Ecuador Enacts Regulations to its Arbitration and Mediation Law*, Kluwer Arb. Blog [1 September 2021], <http://arbitrationblog.kluwerarbitration.com/2021/09/01/the-wait-is-over-ecuador-enacts-regulations-to-its-arbitration-and-mediation-.law/#:~:text=Latin%20America%2C%20regulation-,The%20Wait%20is%20Over%3A%20Ecuador%20Enacts%20Regulations,its%20Arbitration%20and%20Mediation%20Law&text=Ecuador%C2%B4s%20Arbitration%20and,with%20regulations%20until%20August%202021>.
- [22] On 22 February 2022, the government of Ecuador sent a draft Organic Law for the Attraction of Investments, Strengthening of the Securities Market, and Digital Transformation to the Assembly. The initiative proposes tiered dispute resolution mechanisms for investors (first, direct negotiation between the parties, then mediation before a registered mediation centre, then finally arbitration). It also establishes that for contracts exceeding US\$15 million, the state will agree to international arbitration, and in cases of smaller the investments, it will go to local arbitration. See Draft Law on Urgent Economic Matters, Gen Secretariat for Commc'n the Presidency, <https://www.comunicacion.gob.ec/ley-organica-para-la-atraccion-de-inversiones-fortalecimiento-del-mercado-de-valores-y-transformacion-digital/>.
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- [24] See Regulations to the Mediation and Arbitration Law article 4, Executive Decree No. 165-2021 [18 August 2021], <https://www.fielweb.com/reglamento.pdf>.
- [25] See Regulations to the Mediation and Arbitration Law article 4[3], Executive Decree No. 165-2021 [18 August 2021], <https://www.fielweb.com/reglamento.pdf>. These include termination, unilateral termination, or penalties issued in the context of the contractual relationship by any administrative body.
- [26] See Regulations to the Mediation and Arbitration Law article 5, Executive Decree No. 165-2021 [18 August 2021], <https://www.fielweb.com/reglamento.pdf>. See Andrés Larrea, The Wait is Over: Ecuador Enacts Regulations to its Arbitration and Mediation Law, Kluwer Arb. Blog [1 September 2021], <http://arbitrationblog.kluwerarbitration.com/2021/09/01/the-wait-is-over-ecuador-enacts-regulations-to-its-arbitration-and-mediation-law/#:~:text=Latin%20America%2C%20regulation-,The%20Wait%20is%20Over%3A%20Ecuador%20Enacts%20Regulations,its%20Arbitration%20and%20Mediation%20Law&text=Ecuador%C2%B4s%20Arbitration%20and,with%20regulations%20until%20August%202021> [This provision is likely to face some controversy, mostly because arbitration is a creature of consent, and this involves this idea of the existence of a 'tacit consent'].
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- [33] Trade agreements key to resolving the crisis in Ecuador, *APNews* (13 July 2021), <https://apnews.com/article/868aab69f4ed98f5526642cc217ec683>.
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Ari D MacKinnon is a partner at Cleary Gottlieb in their New York City office. His practice focuses on disputes matters in Latin America with a particular emphasis on international arbitration and corruption issues.

Ari has successfully represented a number of major Latin American oil and gas, energy, infrastructure, and pulp and paper companies as well as other clients in disputes in the region. He speaks regularly in Latin America on topics related to arbitration and crisis management. Ari has experience conducting arbitration and corruption-related disputes matters in both English and Spanish.

Ari has been recognised as a banded lawyer for international arbitration by *Chambers Latin America*, *Chambers Global* and *Chambers USA*. Latinvex has named Ari one of "Latin America's Rising Legal Stars". The Legal 500 has recognised Ari as a "Next Generation Partner" for international arbitration, and for six consecutive years (2017-2022) he's been recognised by *Benchmark Litigation* as a "40 & Under Hot List".

Ari joined Cleary Gottlieb in 2009 and became partner in 2015. He received a JD from New York University School of Law. He received an MA from Middlebury College and a BA from Grinnell College.



### Katie Gonzalez

Cleary Gottlieb Steen & Hamilton LLP

Katie Gonzalez is an associate at Cleary Gottlieb in their New York City office. Her practice focuses on international litigation and arbitration, with an emphasis on Latin America. Katie has experience representing international and domestic clients (both sovereign and private entities) in international arbitration matters, as well as in state and federal courts.

Katie was invited to serve on the Organizing Committee of the 2021 New York Arbitration Week (after having served as the Organizing Committee Secretary in 2020), and is believed to be the youngest member of the Organizing Committee, which is populated by a small group of senior members of the community. As an associate, Katie has often been asked to participate in panels regarding her practice, particularly her expertise in Latin America. Katie is an Associate Member of the Chartered Institute of Arbitrators, and is also a member of Arbitral Women, Young ICCA, and ICC YAF. Katie is an alternate director of the New York International Arbitration Center (NYIAC) board of directors, where she also serves as a member of the Programming Committee.

Katie joined Cleary Gottlieb in 2017 after graduating from Harvard Law School.



**Elisa Zavala**  
Cleary Gottlieb Steen &  
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Elisa Zavala is an associate at Cleary Gottlieb in their New York City office. Her practice focuses on international litigation and arbitration, with an emphasis on Latin America. She has published various academic articles on international law and dispute resolutions.

Elisa joined Cleary Gottlieb in 2020. Prior to joining Cleary, Elisa was an associate attorney at Claro & Cia in Chile where she practised complex litigation and arbitration. She was also a professor in Universidad Católica de Chile's international law department. Elisa received her law degree in Chile before completing her LLM at Harvard Law School.

## CLEARY GOTTLIEB

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