

GAR INVESTMENT TREATY ARBITRATION

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?

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 ^[2]
Argentina (1 December 1995 / terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Bolivia (15 August 1997 / terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Brazil (signed 25 September 2019 / not in force)	Yes (partial) ^[3]	Yes	Yes	Yes	No	At least 75 days	No	Yes
Canada (6 June 1997 / terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Chile (21 February 1996 / terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
China (1 July 1997 / terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes [only for disputes on the amount of compensation for expropriation]
Costa Rica (signed 6 December 2001 / not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Cuba (15 August 1997 / terminated)	Yes	Yes	No	Yes	No	6 months	Yes	Yes
Dominican Republic (21 June 1999 / terminated)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
El Salvador (14 January 1996 / 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 / terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Germany (12 February 1999 / terminated)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Guatemala (25 May 2005 / terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Honduras (signed 26 June 2000 / not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Italy (1 February 2005 / terminated)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Netherlands (1 July 2001 / terminated)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Nicaragua (signed 2 June 2000 / not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Paraguay (18 September 1995 / terminated)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Peru (12 December 1999 / terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Romania (18 July 1997 / terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Russian Federation (signed 25 April 1996 / not in force)	Yes	Yes	Yes	Yes	No	6 months	No	Yes

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 ^[2]
Spain (18 June 1997 / terminated)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Sweden (1 March 2002 / terminated)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Switzerland (11 September 1969 / terminated)	Yes	Yes	Yes	Yes	No	No	No	No
United Kingdom of Great Britain and Northern Ireland (24 August 1995 / terminated) ^[4]	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
United States (11 May 1997 / terminated)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Uruguay (31 July 1985 / terminated)	BIT not available							
Venezuela (1 February 1995 / terminated)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes

In addition to the above, Ecuador has entered into a number of multilateral trade agreements,^[5] which obligate the contracting parties to extend the principle of national treatment of goods as established in the General Agreement on Tariffs and Trade 1994 and its interpretative notes. Unlike the bilateral investment treaties described above, multilateral trade agreements generally do not include a chapter on substantive protections or procedural rights for foreign investors.

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 of Ecuador’s investment treaties provide that a legal entity incorporated or duly organised under the laws of a contracting party qualifies 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 have substantial economic activities within the territory of a contracting party (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 the United Kingdom).
Types of entities included in the definition	Ecuador’s investment treaties 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	<p>The Ecuador–United States BIT contains a denial of benefits clause under which the contracting parties reserve the right to deny treaty benefits to a company that does not have an economic connection to the state on whose nationality it relies.</p> <p>Three BITs (Argentina, Chile, Venezuela) permit 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 other contracting party, unless it is proved that the investment was admitted into the territory from abroad.</p> <p>Two BITs (El Salvador, Nicaragua) permit 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 the other contracting party, unless it is proved that the investment was admitted into the territory from abroad.</p> <p>One BIT (Brazil) denies benefits to investments ultimately controlled by a national of the country where the investment was made.</p>

Issue	Distinguishing features in relation to the definition of 'investor'
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 Ecuador–Canada BIT states that investors in Ecuador cannot hold Canadian citizenship (no mutual restriction for investors of Canada). The Ecuador–Argentina BIT excludes from the definition of investor individuals domiciled for more than two years in the host state.

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 treaties adopt an open-ended asset-based definition 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"
Eligible assets	<p>Ecuador's investment treaties list different categories of assets, which typically include:</p> <ul style="list-style-type: none"> • movable and immovable property, as well as any other rights in rem, such as mortgages, liens and pledges; • shares of companies and other kinds of company interests; • claims to money or to any performance having an economic value; • intellectual property rights; and • business concessions, including concessions to search for, extract, and exploit natural resources. <p>The investment treaties can also include returns and/or their reinvestment under their scope of protection (Bolivia, Costa Rica).</p> <p>The Ecuador–Italy BIT lists a number of specific activities that qualify as investments.</p> <p>The Ecuador–Canada BIT specifically includes financial services as investments protected under the treaty.</p> <p>Many BITs protect the guarantees or payments given by a contracting party to their nationals (natural or legal persons) 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, Germany). Other BITs – such as the Ecuador–France BIT – determine that the recognition of subrogation shall be applied on a case-by-case basis pursuant to the contracting party's criteria.</p>
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, Sweden).
Commencement of coverage	<p>Ecuador's investment treaties generally protect all existing investments, including those made before the entry into force of the treaty.</p> <p>Some protect only those investments not involved in a dispute that arose before the treaty entered into force (Argentina, Chile, Costa Rica, Cuba, Paraguay).</p> <p>The Ecuador–El Salvador BIT only protects investments made after the BIT came into force.</p>
Territorial coverage	<p>Most of Ecuador's BITs 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, Venezuela).</p> <p>Other BITs (France, 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 Ecuador–United Kingdom BIT just refers to nationals of the United Kingdom.</p> <p>The Ecuador–United States BIT explicitly provides that the treaty applies to the political subdivisions of the contracting parties.</p>
Accordance with local laws	Ecuador's investment treaties 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, the United Kingdom, Dominican Republic, Romania, Sweden, Switzerland, Venezuela, the United States).
Change in the form of an investment	Many of Ecuador's BITs explicitly clarify that changes in the form of an investment do not affect that investment's 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, the United Kingdom, Dominican Republic, Romania, Sweden, Venezuela).

Issue	Distinguishing features in relation to the concept of 'investment'
Exclusion of certain assets or transactions from the definition	The Ecuador–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”. The Ecuador–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.

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	Ecuador's investment instruments (except Brazil, Honduras and Dominican Republic) simply provide that each contracting party shall accord fair and equitable treatment to investments. The Ecuador–Brazil BIT guarantees that any “measures affecting investment will be administered in a reasonable, objective, and impartial manner”. The BITs with Honduras and the Dominican Republic refer to “fair, equitable and favourable conditions” and “fair and equitable treatment” in their preamble only.
Principles of international law	Some of Ecuador's investment treaties qualify the fair and equitable treatment standard by providing that the contracting parties shall accord investments a fair and equitable treatment in accordance with “international law” or “principles of international law” (Canada, France, Venezuela and the United States).
Non-impairment	Ecuador's investment treaties impose upon the contracting party an obligation not to impair the management, maintenance, use, enjoyment or disposal of investments through “unreasonable or discriminatory treatment” or “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). The French BIT provides that the right to enjoy fair and equitable treatment must not be hindered in fact or law. ⁶

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	Most of Ecuador's investment treaties 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, the United Kingdom, Dominican Republic, Romania, Venezuela). Certain treaties include an explicit reference to “measures depriving indirectly” or “expropriated directly or indirectly” (the United States, France, Italy, Netherlands, Sweden, Switzerland, Paraguay). The Ecuador–Brazil BIT explicitly only protects direct expropriation.
Conditions for expropriation	Ecuador's investment treaties 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, the United States, France, Honduras, Italy, Nicaragua, Netherlands, Paraguay, Dominican Republic, Romania, Venezuela, Sweden, 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 Ecuador–China BIT 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 for fair compensation. The Ecuador–United States BIT specifies that expropriation and compensation should follow international law standards.
Valuation date	Ecuador's investment treaties 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).

Issue	Distinguishing features of the "expropriation" standard
Calculation of compensation	Ecuador's investment treaties 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, Canada), real value (France), fair value (Costa Rica, Peru), commercial value (Paraguay) or value (China, Brazil) of the investment affected.
Prompt, adequate and effective compensation	Ecuador's investment treaties 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 Ecuador-Switzerland BIT determines that such compensation should be consistent with the <i>jus gentium</i> . The Ecuador-China BIT 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". Ecuador's investment treaties state that 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).
Interest and applicable period	Whether compensation for an expropriation will include interest depends on the applicable law. If Ecuador's law applies, the interest rates are determined by Ecuador's Central Bank, and there is a legal prohibition against applying 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 Ecuador-Costa Rica BIT 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 Ecuador-Dominican Republic BIT contains no explicit provision on interest.
Review by judicial and administrative authorities	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).
Links with other protections	The Ecuador-Germany BIT determines that the most-favoured-nation treatment shall apply to the section of expropriation. The Ecuador-Italy BIT 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.

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	Most of Ecuador's investment treaties 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 treaties include an explicit reference to "measures depriving indirectly" or "expropriated directly or indirectly" (the United States, France, Italy, Netherlands, Sweden, Switzerland and Paraguay). The BIT with Brazil explicitly only protects direct expropriation.
Conditions for expropriation	Ecuador's investment treaties 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, the 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 Ecuador-China BIT 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 for fair compensation. The Ecuador-United States BIT specifies that expropriation and compensation should follow international law standards.

Issue	Distinguishing features of the 'expropriation' standard
Valuation date	Ecuador's investment treaties 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).
Calculation of compensation	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.
Prompt, adequate and effective compensation	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).
Interest and applicable period	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.
Review by judicial and administrative authorities	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).
Links with other protections	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.

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 treaties. 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 treaties 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	<p>Most of Ecuador's investment treaties 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).</p> <p>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 treaties further stipulate that the transfers shall be made "without delay" (Germany, Argentina, Brazil, Canada, Chile, Costa Rica, El Salvador, Finland, France, Italy, Netherlands, Peru, the United Kingdom, Sweden, Venezuela, Paraguay, Romania).</p> <p>Ecuador's 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".</p> <p>The Ecuador–Germany BIT 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, Sweden).</p> <p>The Ecuador–Brazil BIT provides that a contracting party may avoid a transfer through the equitable, non-discriminatory and good faith application of its laws relating to certain situations, such as bankruptcy, insolvency or the protection of the rights of creditors, or criminal violations.</p>
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, the 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, the 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 Ecuador–Paraguay BIT determines that it must not impede the parties' use of measures for public or international security.
Performance requirements	<p>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.</p> <p>The BIT with Paraguay explicitly allows parties to create "special formalities" with regard to the establishment of investments as long as they do not impair the rights established in the BIT.</p>

Issue	Other substantive protections
Taxation measures	<p>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).</p> <p>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).</p> <p>Finally, other investment instruments distinguish claims for breach of tax conventions from claims for breach of BITs in connection with a taxation measure (the United States, Canada, Netherlands and Dominican Republic).</p>

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	<p>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.</p>
Taxation measures	<p>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.</p> <p>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).</p>

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	<p>All Ecuadorian investment treaties include arbitration agreements for the settlement of disputes arising from their application between the contracting parties. These arbitration agreements provide 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 of the date on which such negotiations were requested, a party can submit the dispute to an arbitral tribunal (Germany, Argentina, Bolivia, Canada, China, Chile, Costa Rica, Cuba, El Salvador, Spain, Finland, Honduras, Italy, Nicaragua).</p>
Fork-in-the-road and waiver of local remedies	<p>Some of Ecuador's investment treaties include a fork in the road clause, which provides that the investor must choose between litigating its claims via the host State's domestic courts or via international arbitration, and that once that choice has been made, it is final (Argentina, Bolivia, Chile, China, Costa Rica, Cuba, El Salvador, Nicaragua, Peru, Venezuela, Romania).</p> <p>The Ecuador–Germany BIT 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 Ecuador–Finland BIT 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 Ecuador's investment treaties is six months, except for the Ecuador–Brazil BIT, which provides for 75 days.</p>

Issue	Procedural rights
Local courts, ICSID or ad hoc arbitration	<p>Some of Ecuador's investment treaties 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, the 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), Ecuador's 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, the 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). Many investment treaties provide for international ad hoc arbitration (Paraguay, United States, Germany, Netherlands, Finland and China).</p> <p>Some investment treaties 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	According to certain Ecuador investment treaties, 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).

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 a 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.

In 2017, Ecuador withdrew from the BITs with Germany, Argentina, Bolivia, Canada, Spain, United States, France, Italy, Peru, United Kingdom, Sweden, Switzerland, Venezuela, Chile, China, and the Netherlands.[i] Some withdrawals became effective a year after the withdrawal (Argentina, Canada, United States, Peru, United Kingdom). The BIT with the Netherlands remained in force until 2021, and the BIT with Spain remained in force until June 2022. Most of these BITs contained 'sunset clauses' pursuant to which covered investments will still be protected by the BITs after the date on which they were effectively terminated for a further period of 15 years (Argentina, Canada, United Kingdom – the English-language version of this BIT provides a 15-year sunset clause, while the Spanish-language version provides a 20-year sunset clause – Sweden, Netherlands, Germany); 10 years (Bolivia, Spain, United States, Peru, Venezuela, Chile, China, Switzerland); or five years (Italy) from such date of termination.

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

The BIT with Brazil was signed in 2019 but never entered into force because it has yet to be approved by Brazil's Congress.[ii]

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?

Government entity to which claim notices are sent	<p>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 Juan Carlos Larrea Valencia.⁷</p> <p>The address of this entity is Av. Amazonas N39-123 y Arízaga, Quito Ecuador; and the phone number is +593 2 2941300.</p>
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15 Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department that manages investment treaty arbitrations

Under Ecuadorian law, the Attorney General represents the state in disputes before arbitral tribunals.⁸ 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.⁹

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?

Internal/external counsel

The Director of International Affairs manages the hiring of private attorneys when matters require specialist knowledge or experience.¹⁰ The Attorney General makes the final decision.¹¹ 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.¹²

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.

Washington Convention implementing legislation

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. Ecuador first ratified the ICSID Convention in 1986. However, Ecuador withdrew from the ICSID Convention in 2009. As a result, it ceased to be a party to the International Centre for Settlement of Investment Disputes from the period 2009 to 2021.¹³

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.

New York Convention

Ecuador was an early signatory of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Award (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 I(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.¹⁴

New York Convention implementing legislation

The rules for recognising and enforcing international arbitration awards are set out in the Arbitration and Mediation Law (AML) and its new Regulations.¹⁵ 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.¹⁶ 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.¹⁷ This provision is in harmony with Article III of the New York Convention and confirms that the 'exequatur' process is no longer needed.¹⁸ 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. Judges in Ecuador may also reject and sanction any attempt by a party looking to obstruct the enforcement process.¹⁹

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

Legislation governing non-ICSID arbitrations

Yes. Ecuador's AML and its new Regulations²⁰ are an evolving²¹ legal regime governing arbitral proceedings.²²

The Regulations provide that Ecuador and public sector entities (as defined in the Ecuadorian Constitution)²³ 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.²⁴ 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.²⁵

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.²⁶

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?

Compliance with adverse awards

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 honours its commitments.²⁷ By 2018, Ecuador had paid US\$2.313 million to satisfy arbitral awards issued against it.²⁸

21 Describe the national government's attitude towards investment treaty arbitration.

Attitude of government towards investment treaty arbitration

The attitude of the Ecuadorian government has changed over the years. Rafael Correa, President from 2007 to 2017, was an opponent of BITs.^[32] Correa's successor, Lenín Moreno, commenced new investment treaty negotiations.^[33]

Moreno's government was replaced by Guillermo Lasso, who has continued Moreno's pro-BIT position.^[34] Lasso's government has focused on re-energising the economy and implementing measures to encourage investment, including foreign investment. These efforts include: (i) re-signing the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention);^[35] (ii) pursuing significant new BITs;^[36] (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.^[37]

However, there is political opposition to Lasso's work with respect to foreign investments.^[38] A critical obstacle to Ecuador entering into new BITs may be article 422 of the Ecuadorian Constitution, which prohibits "treaties or international treaties 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".^[39] The Transitory Constitutional Court has ruled that the dispute resolution provisions contained in Ecuador's BITs contravene this article.^[40]

On 4 July 2018, Ecuador formally requested to be considered a Partner State of the Pacific Alliance,^[41] which includes arbitration as a settlement mechanism for investor-state disputes. Ecuador joined the Pacific Alliance as an Associate State in July 2019.

22 To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

Attitude of local courts towards investment treaty arbitration

No cases seeking enforcement of an international award arising from investment treaty arbitration have been filed before Ecuadorean courts.

The Arbitration and Mediation Law establishes the principle of priority of arbitration over ordinary operation of the court system and the principle of *in dubio pro arbitration*.⁴²

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.⁴³

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 Law on Production Incentives and Tax Fraud Prevention makes it possible to both grant a 10-year exemption from income tax to companies operating in basic industries (this concept is left undefined) and include tax stabilisation clauses in investment contracts.

These national laws are described further below.

National legislation	Substantive protections			Procedural rights	
	FET	Expropriation	Other	Local courts	Arbitration
Organic Code of Production, Trade and Investment, COPCI ⁴⁴	No ⁴⁵	Yes, it prohibits the confiscation of investors' property. ⁴⁶	Prohibits arbitrary or discriminatory measures. Guarantees national treatment. Guarantees full protection and security. ⁴⁷	Yes ⁴⁸	Yes ⁴⁹

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.

Awards

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

Awards	Case	Instrument(s) invoked	Decisions
<i>Occidental Exploration and Production Company v The Republic of Ecuador</i> , LCIA Case No. UN3467.	Ecuador–United States BIT	Award, 1 July 2004. ^[52]	
<i>IBM World Trade Corporation v Republic of Ecuador</i> , ICSID Case No. ARB/02/10.	Ecuador–United States BIT.	Award embodying the Parties' Settlement, 22 July 2004. ^[53]	
<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>).	Ecuador–Canada BIT.	Award, 3 February 2006. ^[54]	
<i>Repsol YPF Ecuador SA v Empresa Estatal Petróleos del Ecuador (Petroecuador)</i> , ICSID Case No. ARB/01/10.	Ecuador–Spain BIT.	Award, 20 February 2004. ^[55]	Decision on Annulment, 8 January 2007. ^[56]
<i>Técnicas Reunidas, SA and Eurocontrol, SA v Republic of Ecuador</i> , ICSID Case No. ARB/06/17.	Ecuador–Spain BIT.	Order of the Acting Secretary-General taking note of the discontinuance of the proceedings, 13 May 2008.	
<i>Duke Energy Electroquil Partners & Electroquil SA v Republic of Ecuador</i> , ICSID Case No. ARB/04/19.	Ecuador–United States BIT.	Award, 18 August 2008. ^[57]	

Awards	Case	Instrument(s) invoked	Decisions
<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. ^[58]	
<i>Noble Energy Inc. and Machalpower Cia Ltda v The Republic of Ecuador and Consejo Nacional de Electricidad</i> , ICSID Case No. ARB/05/12.	Ecuador–United States BIT.	Decision on jurisdiction, 5 March 2008. ^[59]	Order of the Tribunal taking note of the discontinuance of the proceedings, 20 May 2009.
<i>Empresa Eléctrica del Ecuador Inc. v Republic of Ecuador</i> , ICSID Case No.	ARB/05/9.	Ecuador–United States BIT.	Award, 2 June 2009. ^[60]
<i>M.C.I. Power Group LC and New Turbine, Inc. v Republic of Ecuador</i> , ICSID Case No. ARB/03/6.	Ecuador–United States BIT.	Award, 31 July 2007. ^[61]	Decision on Annulment, 19 October 2009. ^[62]
<i>Murphy Exploration and Production Company International v Republic of Ecuador</i> , ICSID Case No. ARB/08/4.	Ecuador–United States BIT.	Award on jurisdiction, 15 December 2010. ^[63]	
<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.	Ecuador–Spain BIT.	Order of the Arbitral Tribunal taking note of the discontinuance of the proceedings, 9 February 2011. ^[64]	
<i>Chevron Corporation and Texaco Petroleum Company v The Republic of Ecuador</i> , PCA Case No. 2007-02/AA277.	Ecuador–United States BIT.	Award, 31 August 2011. ^[65]	
<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. ^[66]	
<i>Ulysseas, Inc v The Republic of Ecuador</i> , UNCITRAL PCA Case No. 2009-19.	Ecuador–United States BIT.	Award, 12 June 2012. ^[67]	
<i>Republic of Ecuador v United States of America</i> , PCA Case No. 2012-5.	Ecuador–United States BIT.	Award, 29 September 2012. ^[68]	
<i>Únete Telecomunicaciones SA and Clay Pacific SRL v the Republic of Ecuador</i> , UNCITRAL.	Ecuador–Bolivia BIT.	Order of the Arbitral Tribunal taking note of the discontinuance of the proceedings, 7 August 2013. ^[69]	
<i>Occidental Petroleum Corporation and Occidental Exploration and Production Company v The Republic of Ecuador</i> , ICSID Case No. ARB/06/11.	Ecuador–United States BIT.	Award, 5 October 2012. ^[70]	Decision on Annulment, 2 November 2015. ^[71]
<i>Copper Mesa v Republic of Ecuador</i> , PCA Case No. 2012-02.	Ecuador–Canada BIT.	Award, 15 March 2016. ^[72]	
<i>Murphy Exploration & Production Company – International v The Republic of Ecuador</i> , UNCITRAL, PCA Case No. 2012-16.	Ecuador–United States BIT.	Award, 10 February 2017. ^[73]	
<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>).	Ecuador–United States BIT.	Decision on liability, 14 December 2012.	Decision on counterclaims, February 7, 2017. Order taking note of the discontinuance of the proceeding, 9 December 2017. ^[74]
<i>Chevron Corporation and Texaco petroleum Corporation v Republic of Ecuador</i> , PCA Case No. 2009-23.	Ecuador–United States BIT.	First Partial Award, 17 September 2013. ^[75]	Second Partial Award, 30 August 2018. ^[76]
<i>Albacora S.A. v Republic of Ecuador</i> , PCA Case No. 2016-11.	Ecuador–Spain BIT.	Final Award, 18 July 2019. ^[77]	
<i>Merck Sharpe & Dohme (I.A.) Corporation v The Republic of Ecuador</i> , PCA Case No. 2012-10.	Ecuador–United States BIT.	Final Award, 5 March 2020. ^[78]	
<i>Perenco Ecuador Ltd v The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)</i> , ICSID Case No. ARB/08/6.	Ecuador–France BIT.	Award, 27 September 2019. ^[79]	Decision on Annulment, 4 May 2021. ^[80]
<i>Mantenimientos, Ayuda a la Explotación y Servicios S.A. (MAESSA) and Sociedad Española de Montajes Industriales S.A. (SEMI) (formerly Consorcio GLP) v Ecuador</i> , ICC Case No. UNC 161/ASM.	Ecuador–Spain BIT.	Final Award, 16 December 2022. ^[81]	

Awards	Case	Instrument(s) invoked	Decisions
Pending proceedings			
<i>Worley Parsons International, Inc. v Republic of Ecuador</i> , UNCITRAL.	Ecuador–United States BIT.	Pending. ^[xxx1]	
<i>Aecon Construction Group Inc. v The Republic of Ecuador</i> , PCA Case No. 2020-19.	Ecuador–Canada BIT.	Pending. ^[82]	
<i>Holcim Investments (Spain), S.L. v the Republic of Ecuador</i> , PCA Case No. 2021-31.	Ecuador–Chile BIT.	Pending. ^[83]	
<i>Corporación Nacional del Cobre de Chile, Exploraciones Mineras Andinas S.A. and Inversiones Copperfield SPA v Republic of Ecuador</i> , ICSID Case No. ARB/22/3.	Ecuador–Chile BIT.	Pending. ^[84]	

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?, <i>Kluwer Arb. Blog</i> (17 May 2020), 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.
Andrés Larrea, The Wait is Over: Ecuador Enacts Regulations to its Arbitration and Mediation Law, <i>Kluwer Arb. Blog</i> (1 September 2021).
Andrés Larrea, Ecuador's Constitutional Court Rules in Favor of Ratification of the ICSID Convention, <i>Kluwer Arb. Blog</i> (30 July 2021), http://arbitrationblog.kluwerarbitration.com/2021/07/30/ecuadors-constitutional-court-rules-in-favor-of-ratification-of-the-icsid-convention/ .
Ari MacKinnon et al., Ecuador Re-Ratifies The ICSID Convention: Impact Of The Ratification In Ecuador And In The Region, <i>Cleary Gottlieb</i> (9 August 2021), https://www.clearygottlieb.com/-/media/files/alert-memos-2021/ecuador-re-ratifies-the-icsid-convention.pdf .
Ecuador begins talks over new BITs, <i>Glob Arb Rev</i> (23 February 2018) https://globalarbitrationreview.com/article/ecuador-begins-talks-over-new-bits .
Daniel Finn & Guillaume Long, Lenín Moreno Has Betrayed Ecuador. Now the Country Is in Revolt., <i>Jacobin</i> (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, <i>Kluwer Arb. Blog</i> (30 June 2021), http://arbitrationblog.kluwerarbitration.com/2021/06/30/ecuador-signs-the-icsid-convention-next-steps-for-entry-into-force/ .
Fernando Carbrera Diaz, <i>Ecuador continues exit from ICSID</i> , <i>IISD Inv. Treaty News</i> (8 June 2009), https://www.iisd.org/itn/fr/2009/06/05/ecuador-continues-exit-from-icsid/ .
Guillaume Long & Andrés Arauz, New Ecuadorian Government Teams Up with Powerful International Lobbies to Rejoin Investment Treaties Prohibited by the Constitution, <i>Institute for New Econ Thinking</i> (14 July 2021), https://www.ineteconomics.org/perspectives/blog/new-ecuadorian-government-teams-up-with-powerful-international-lobbies-to-rejoin-investment-treaties-prohibited-by-the-constitution .
Juan Carlos Herrera-Quenguan, Explaining Ecuador's shifting position on FDI, investment treaties, and arbitration, <i>Inv. Treaty News</i> (5 October 2020), https://www.iisd.org/itn/en/2020/10/05/explaining-ecuadors-shifting-position-on-fdi-investment-treaties-and-arbitration-juan-carlos-herrera-quenguan/#_ftnref27 .
Rodrigo Jijón-Letort et al., Ecuador, <i>Glob, Arbit Rev.</i> (12 August 2021), https://globalarbitrationreview.com/review/the-arbitration-review-of-the-americas/2022/article/ecuador#footnote-011-backlink .
Termination of Bilateral Investment Treaties Has Not Negatively Affected Countries' Foreign Direct Investment Inflows, <i>Public Citizen</i> (16 April 2018), https://www.citizen.org/article/termination-of-bilateral-investment-treaties-has-not-negatively-affected-countries-foreign-direct-investment-inflows/ .
Tillmann Rudolf Braun, Globalization: The Driving Force in International Investment Law', in <i>The Backlash against Investment Arbitration</i> , 491–505 (Michael Waibel et al. eds., Kluwer Law Int'l 2010), https://www.kluwerarbitration.com/document/kli-ka-201011023-n?q=investment%20treaty%20ecuador .
Trade agreements key to resolving the crisis in Ecuador, <i>AP News</i> (13 July 2021), https://apnews.com/article/868aab69f4ed98f5526642cc217ec683 .
Cecilia Olivet, Why did Ecuador terminate all its Bilateral investment treaties? <i>TNI</i> (25 May 2017), https://www.tni.org/en/article/why-did-ecuador-terminate-all-its-bilateral-investment-treaties .

Notes

- [1] The authors thank Cleary Gottlieb Steen & Hamilton associate Sarah Libowsky and former international lawyer Martin Vainstein for their 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 IV(2) states that “[c]ada [p]arte otorgará a los inversionistas de la otra Parte y sus inversiones un tratamiento ajustado al debido proceso legal.”
- [4] 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.
- [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>.
Treaty Establishing the Latin American Integration Association (LAIA), 12 August 1980, <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2395/download>.
Framework Agreement for the Creation of a Free Trade Area between the Andean Community and MERCOSUR, 16 April 1998, <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3068/download>.
Agreement between the Government of the United States of America and the Governments of Bolivia, Colombia, Ecuador, Peru and Venezuela, Member Countries of the Andean Community, concerning the establishment of a trade and investment council, 30 October 1998 (signed but not in force).
Trade and Investment Cooperation Arrangement Between the Government of Canada and the Government of the Andean Community, 31 May 1999, <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2488/download>.
& Political Dialogue and Co-operation Agreement between the European Community and its Member States, of the one part, and the Andean Community and its Member States, Bolivia, Colombia, Ecuador, Peru and Venezuela, of the other part, 15 October 2003 (signed but not in force), <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3100/download>.
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- [27] 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.
- [28] 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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- negotiation between the parties, mediation before a registered mediation centre, arbitration). It also establishes that for contracts exceeding US\$15 million in investments, the state will agree to international arbitration, and in case the investment is less, the arbitration will be local. See Draft Law on Urgent Economic Matters, Gen. Secretariat for Commc'n of 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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Katie joined Cleary Gottlieb in 2017 after graduating from Harvard Law School.



Elisa Zavala

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Elisa Zavala is an associate at Cleary Gottlieb in their New York City office. Her practice focuses on complex international arbitration cases involving investment and commercial claims, with an emphasis on Latin America. Her experience includes arbitrating disputes in Spanish and English, under the laws of various jurisdictions in the United States and Latin America, in matters involving oil & gas, banking and post-M&A disputes. Elisa is bilingual and trained both in civil and common law.

Elisa is an active member of the international arbitration community and frequently speaks in specialized panels related to her practice. She has also published extensively

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Elisa joined Cleary Gottlieb in 2020. Prior to Cleary, Elisa was an associate in the litigation and arbitration practice of a Chilean law firm and taught International Dispute Resolution as an Adjunct Professor of Law at Universidad Catolica de Chile. Elisa received her law degree in Chile and holds an LL.M. from Harvard Law School.

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