The Arbitration Review of the Americas

2022

Ecuador

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The Arbitration Review of the Americas 2022 covers Argentina, Bolivia, Canada, Ecuador, Mexico, Panama, Peru and the United States; and has eleven overviews, including two on arbitrability (one focused on Brazil in the context of allegations of corruption, the other on the relationship with competence-competence across the region). There's also a lucid guide to the interpretation of "concurrent delay" around the region, using five scenarios.

Other nuggets include:

• helpful statistics from Brazil's CAM-CCBC, showing just how often public entities form one side of an arbitration;
• an exegesis on the questions that US courts must still grapple with when it comes to enforcing intra-EU investor-state awards;
• a similarly helpful summary of recent Canadian court decisions;
• another on Mexican court decisions that showed a rather mixed year; and
• the discovery that the AmCham in Peru as of July 2021 now engages in ICC-style scrutiny of awards.

Ecuador

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Summary

IN SUMMARY

This article outlines the Ecuadorian approach to international arbitration, considering the main aspects of domestic law. Specifically, it focuses on major Ecuadorian developments regarding actions taken by the government to foster foreign direct investment (FDI), including arbitration matters. It includes a section devoted to Ecuador's history in investor-state arbitration and the legal requirements for the state to execute an arbitration agreement. This article also outlines recent legislative changes seeking to eliminate recognition or exequatur proceedings for foreign arbitral awards, allowing for direct enforcement. Finally, this article presents Ecuador's pro-arbitration developments regarding annulment arbitral awards owing to recent decisions by the Constitutional Court limiting the threshold of the grounds for annulment.

DISCUSSION POINTS

- Ecuadorian approach to international arbitration
- Ecuador's actions to foster FDI, including arbitration matters
- Ecuador as party to international arbitration (active cases, requirements to execute an arbitration agreement and history of compliance with awards)
- Direct enforcement of arbitral awards without the need of a recognition or exequatur phase
- Limitations to the annulment action by Ecuador's Constitutional Court

REFERENCED IN THIS ARTICLE

- Arbitration and Mediation Law of Ecuador
- Constitution of the Republic of Ecuador
- FDI
- Attorney General's Office of Ecuador
- Constitutional Court of Ecuador
- Recognition or exequatur process
- EU-Peru-Colombia Free Trade Agreement
- Ecuador-Brazil Bilateral Investment Treaty
- Law to Incentivise Production and Investments

ARBITRATION AND MEDIATION LAW: GUIDELINES FOR APPLICABILITY

Arbitration in Ecuador is regulated by the Arbitration and Mediation Law of 1997 (AML).[1] The AML is an UNCITRAL-oriented body of norms.

Additionally, pursuant to the AML, other bodies of law, such as the General Organic Code of Procedures, the Organic Code for the Judiciary and the Civil Code,[2] may supplement it.[3]

The AML, applicable in domestic arbitration or as ***lex arbitri*** (ie, when it is the law chosen by the parties to govern the arbitration or, in its absence, as the law of the place where the arbitration has its seat) provides for certain basic principles, including at least the following aspects:

- validity requirements of the arbitration agreement;
- challenge and excuse of the arbitrators;
- competence–competence principle;
- severability principle;
- favor arbitralis principle;
- due process rules;
- provisional measures (under the AML if parties agree, arbitral tribunals can directly order and seek assistance of public authorities to enforce provisional measures without recourse to local courts);
- judicial assistance;
- formalities for issuing the arbitral award;
- actions and recourses against the award; and
- jurisdiction of the courts.

ARBITRATION IN PUBLIC CONTRACTS

Pursuant to the Ecuadorian Constitution (the Constitution) and the AML, for an arbitration agreement included in a public contract to be valid, the public entity must seek prior authorisation by the Attorney General's Office. The Ecuadorian National Court has ruled that absent authorisation, the arbitration agreement is valid.

Ecuadorian law also requires prior authorisation by the Attorney General's Office for a public entity to agree on foreign legislation as the substantive applicable law for the public contract.

INTERNATIONAL ARBITRATION: DEFINITION AND SCOPE

The AML does not have an explicit definition for international arbitration. It only mentions the requirements for a proceeding to be considered as such. Article 41 sets forth two kinds of requirements: subjective and objective.

In the former case, the parties must establish in their agreement that the arbitration will be international. In our opinion, this agreement does not have to be explicit – the mere adoption of foreign laws, regulations or other set of rules regarding international arbitration should be interpreted as the parties' positive decision that the arbitration is international.

In the latter case, it is necessary that the dispute include at least one of the following assumptions:

- at the time of execution of the arbitration agreement, the parties are domiciled in different states;
- the place where a substantial portion of the obligations is to be performed or to which the issue under litigation is most closely related is situated outside the state in which at least one of the parties is domiciled; or

- the issue being litigated relates to an international trade operation susceptible to compromise and not affecting or impairing national or collective interests.[4]

Characterising arbitration proceedings as international is vitally important because the parties may accede to the pre-eminence of the free will principle set forth in the AML and mentioned in the preceding section, as well as to international instruments regarding this issue executed and ratified by Ecuador.

The AML provides for a dualist regime comprising detailed rules governing local arbitration and a few – albeit determinant – rules on international arbitration.

In respect of international arbitration, article 42 of the AML categorically provides the following:

> International arbitration shall be regulated by treaties, conventions, protocols and other acts of international law signed and ratified by Ecuador. Every natural or juridical person, public or private with no restrictions whatsoever is at liberty, directly or by reference to an arbitration regulation, to stipulate everything concerning the arbitration proceeding, including its establishment, discussions, language, applicable legislation, jurisdiction and seat of the arbitration panel which may be in Ecuador or in a foreign country.

The above provision sets forth the principle of pre-eminence of party autonomy in matters of international arbitration on the basis of which the procedural rules can be freely agreed by the parties, resulting in important consequences, including the following.

- Parties may elect the rules to govern ad hoc or institutional arbitration proceedings. This attribution would mean that, in principle, the procedural norms for international arbitration chosen by the parties would not clash with local law unless they infringe norms pertaining to public policy – not clearly defined in Ecuador. Despite this lack of definition, we consider that norms such as those relating to the due process (specified below) and other constitutional rights would be included in this category.
- AML provisions for local proceedings are not necessarily applicable to international arbitration, except strictly to the assumptions described in this chapter.
- Ecuador does not have a law on international arbitration that might limit the prerogatives of article 42 of the AML in respect of arbitration proceedings.
- Substantive non-procedural provisions in the AML could be important and applicable to international arbitration in certain circumstances.

INTERNATIONAL CONVENTION

According to Ecuador's legal system, international law is subordinate to the Constitution and prevails over and above other domestic laws,[5] except in respect of human rights and ius cogens provisions where international instruments may prevail over the Constitution if they stipulate more favourable rights to persons.[6]

With regard to international arbitration, Ecuador adopted the main international instruments on this subject quite early on, including:

- the 1928 Havana Convention on Private International Law;[7]
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the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention);[8]

- the 1966 International Convention on Settlement of Investment Disputes between States and Nationals of other States (the Washington Convention)[9] (denounced in 2009);[10]
- the 1975 Inter-American Convention on International Commercial Arbitration (the Panama Convention);[11] and
- the 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.[12]

INTERNATIONAL ARBITRATION AND FOREIGN INVESTMENT PROTECTION

Ecuador's former president, as one of his last actions in office, concluded the bilateral investment treaty (BIT) denunciation process initiated in 2008. Denunciation was based on the idea that dispute resolution clauses included in the BITs violate article 422 of the Constitution, which provides:

> Treaties or international instruments where the Ecuadorian State yields its sovereign jurisdiction to international arbitration, in contractual or commercial disputes, between the State and natural persons or legal entities cannot be entered into.

Currently, investors conducting investments prior to a BIT's effective termination date are still protected under each BIT sunset clause. In other cases, BITs are still in force pursuant to its provisions regarding effective termination.

However, in 2019, Ecuador's National Assembly filed an interpretation petition regarding article 422 of the Constitution before the Constitutional Court, seeking the court to declare that the article is not applicable to BITs as they do not include arbitration agreements for settlement of contractual or commercial disputes and, additionally BIT executions by Ecuador do not entail a 'waiver of sovereign jurisdiction'. This petition has not been solved yet, and the public hearing before the Constitutional Court has yet to take place.

ACTIONS TO FOSTER FOREIGN INVESTMENT

After President Moreno took office, certain actions suggested the Ecuadorian government had abandoned the trend set forth by former President Correa. Those actions include:

- joining the EU-Perú-Colombia Free Trade Agreement in 2018;
- executing a bilateral investment agreement with Brazil in late 2019;
- starting negotiations with certain countries to conclude a BIT; and
- enacting the Law to Incentivise Production and Investments (LIPI), with the goal of fostering foreign investment.

LIPI amended certain provisions of the Organic Production and Investment Code, which regulates investment contracts. It establishes that all investment contracts must include arbitration agreements that provide for national or international arbitration procedures in law for the resolution of disputes.

In this sense, and unlike other provisions related to arbitration in contracts of a public nature that establish the possibility, under the word 'may', of the parties to agree arbitration as a method of resolution of contractual disputes, LIPI establishes, in an imperative manner, under the word 'shall', the obligation of the parties to agree on national or international arbitration as a method of resolution of disputes under investment contracts.

LIPI does not make any reference to the seat of arbitration within international arbitration proceedings; therefore, this must be agreed by the parties in each case. In the case of investment contracts exceeding US$10 million, LIPI mandates that the arbitration agreement contains the possibility of the claimant, as its sole option, to opt for an arbitration procedure regulated by, 'among others':

- the UNCITRAL Arbitration Rules;
- the Arbitration Rules of the International Chamber of Commerce; and
- the Rules of Procedure of the Inter-American Commercial Arbitration Commission.

The words 'among others' open the possibility for the arbitration agreement to allow the claimant to agree on a different set of arbitration rules, such as the Arbitration Rules of the London Court of International Arbitration. However, LIPI makes it clear that in no case will the rules of emergency arbitration apply.

Ecuador seems willing to take further steps since President Lasso's assumption of office in May 2021. The new president's governance plan[13] seeks the attraction of foreign investment by creating and strengthening a clear and simple regulatory framework, softening tax impositions (eg, the elimination of the foreign currency outflow tax), creating a public–private committee and boosting the stock market, among other things.

ECUADOR AND INTERNATIONAL ARBITRATION

According to the latest statement issued in December 2020, Ecuador has 69 active international proceedings, as reported by the Attorney General's Office[14].

Ecuador has complied voluntarily with all awards issued against it.[15]

Of the total publicly available awards,[16] Ecuador has been found liable in 55 per cent of them and not liable in 22.5 per cent of the total known cases. Of all total known awards, 22.5 per cent were either discontinued or a settlement was reached. In 60 per cent of all awards in which Ecuador has been found liable, the award also includes the payment of costs in favour of the investor.[17]

In our opinion, Ecuador, as a matter of public policy, complies with international arbitration awards – both investment treaty and commercial and contractual – without the need of private parties to forcibly enforce them before Ecuadorian courts. The only case we know where a private party started local enforcement proceedings to enforce an arbitral award was in the Chevron II case; however, after enforcement proceedings started, Ecuador decided to comply with the award.

In our view, this situation has to do with Ecuador's intent to show itself as a compliant state, considering the adverse effects a 'defaulting state' status might generate regarding the emission of public bonds or tariff benefits.

In this sense, an American company initiated proceedings before the United States Trade Representative seeking the US government to limit Ecuador's tariff benefits,[18] arguing

non-compliance with the ***Chevron III*** award on merits. Among other things, Ecuador argued having an exemplary record regarding compliance with international arbitral awards, stating: 'Ecuador has a clean record of compliance with final awards. . . . Ecuador continues to engage in good faith to fulfill its international law obligations.'[19]

Enforcement of international arbitral awards in Ecuador

The rules for recognising and enforcing international arbitration awards were set out in the General Organic Code of Procedures (GOCP).

Under GOCP provisions, before a foreign award's enforcement, it must be subject to a recognition process or exequatur, which is a declaration by which the award is given the same status as a national judgment.

Unlike the New York Convention, the exequatur process puts the burden of proof on the petitioner, which must demonstrate that:

- the award complies with all the formalities required by the state in which it was rendered;
- the award is final and has a ***res iudicata*** effect under the law it was rendered;
- the documentation attached is translated (if applicable);
- the due process rights of the parties were met; and
- the request indicates the domicile of the respondent for service of process purposes.

If the arbitral award was rendered against the state, the petitioner must also demonstrate that the award does not contravene any constitutional, treaty or legal provision.

Once the competent court has decided favourably on the recognition, the petitioner must file an enforcement petition before the correspondent trial judge, according to the procedure indicated for domestic awards issued in Ecuador.

In 2018, the Ecuadorian Assembly enacted LIPI. LIPI amended all the previously described GOCP provisions on the recognition and enforcement of foreign awards and judgments, eliminating the words 'arbitral award' in all of them. In this way, it made the recognition and enforcement procedure set out in the GOCP inapplicable for foreign arbitral awards.

Additionally, LIPI reinstated the last paragraph of article 42 of the Arbitration and Mediation Law (LAM), which provided that the enforcement procedure for international awards would be the same as the one for domestic awards. This article was repealed in May 2015 with the promulgation of the GOCP rules mentioned above and has since been brought back into force.

Therefore, as a matter of Ecuadorian law, an award rendered under by an international arbitration tribunal will be directly enforced by means of the executive process established under the GOCP, without the need for a previous recognition phase.

This is consistent with article 7 of the New York Convention, under which local provisions are applicable in cases where the result is more favourable than the Convention itself.

However, certain local courts have ignored the direct enforcement process set out in article 42 of the LAM, under article 363, number 5 of the GOCP, which requires a recognition phase for any kind of foreign decision, including arbitral awards. There are currently two

cases pending final decisions on this issue. The pending cases concern contradictory previous decisions that are being challenged before the National Court of Justice and the Constitutional Court by the enforcing parties.

In 2018, SEITUR Cía Ltda pursued an unenforceability action against ICC Award No. 19058/GFG (17230-2018-14203). Although the request was rejected owing to a formality, the provincial court before which the appeal of the procedure was conducted affirmed that the amendment introduced through the LIPI implies that foreign awards are presumed valid; therefore, according to this court, a recognition phase before award execution was not necessary.

Conversely, the court said that any opposition to an arbitral award's execution should not have been brought through an autonomous process but within the enforcement procedure. SEITUR Cía Ltda is appealing this decision before the National Court of Justice, which has not yet issued its decision.

While this unenforceability decision was pending, CW Travel Holdings NV, SEITUR's counterparty, tried to enforce the same award before a first-level Ecuadorian judge (Case No. 17230-2019-03159). According to the judge, CW Travel Holdings NV was not entitled to request the award's enforcement because the award had not been recognised according to article 363, number 5 of the GOCP. The decision emphasised the fact that recognition was essential for the award to be enforceable. This ruling was confirmed by the Court of Appeals but has been challenged before the Constitutional Court, which has not yet issued its decision.

Nonetheless, legal practitioners in Ecuador view article 42 provisions as being clearly aligned with the LIPI's intent, which is the elimination of the exequatur requirement for arbitral awards, allowing for direct enforcement.

In addition, counsel should note that although the exequatur does not constitute a requirement to execute foreign arbitral awards, the causes to deny recognition set out in the New York Convention may be alleged within the execution procedure before the writ of execution is issued.

ANNULMENT ACTIONS

In 2018, the development of arbitral proceedings was disturbed by a series of decisions by the annulment courts, especially in cases against state entities related to public contracts.

The annulment courts breached the ***ultima ratio*** character behind the actions to set aside an arbitration award by means of an overreaching construction of causes brought by the AML for an award to be set aside, as well as considering different causes not expressly provided under the AML.

For example, the annulment courts have reviewed, without legal faculty, the tribunal's decision on jurisdiction as well as the motivation behind the award. In line with this, the annulment courts have ruled administrative acts (eg, unilateral termination of contracts), although produced in a public contract containing an arbitration agreement, not to be arbitrable under Ecuadorian law. Those decisions expressly contravene the Constitution, which allows arbitration in public contracts.

Fortunately, in late 2019, the Constitutional Court rendered two decisions favourable to arbitration, which held that:

- annulment actions are ultima ratio and must respect the minimal intervention principle;
- the setting aside causes are limited to the ones set forth in the AML as a close list; and
- lack of jurisdiction and motivation are not annulment causes set forth in the AML and, therefore, cannot be subject to review by annulment courts.

Specifically, in Case No. 1758-15-EP, a case related to a violation of consumer rights where the ordinary court declared that the arbitral clause was void owing to the requirement of the consumer's ratification of the clause, the Constitutional Court ruled that articles 8 and 22 of the AML were contravened. According to the Court, the authority who heard the case in the first place should have suspended proceedings until the issuance of a decision on the arbitral agreement, of which existence was alleged.

The Constitutional Court went a step further regarding the competence–competence principle by establishing that the power to decide on the validity and scope of the arbitral agreement is exclusively reserved to the arbitral tribunal. In this regard, whenever a party raises an exception related to an arbitral agreement, the judge must not analyse the agreement itself, but only whether the dispute is part of the arbitral agreement's object, where the judge should be guided by the ***in dubio pro arbitri*** principle.

Endnotes

1 Official Register 145, 4 September 1997. Codification was published in Official Register 417, 14 December 2006. ^ Back to section

2 The Organic Code of Procedures was recently published on 22 May 2015. ^ Back to section

3 Article 37, AML: 'The provisions of the Civil Code, Code of Civil Procedure or Commercial Code and other related laws are supplementary and shall be applied on all matters not set forth in this Law, provided that arbitration at law is involved.' It is not possible to understand the objectives of the lawmaker's limitation because, in practice, supplementary norms also are – and should be – used in arbitration ex aequo et bono or in equity, especially if the judiciary intervenes during any stage. ^ Back to section

4 Article 41, AML. The terms 'if susceptible to compromise and not affecting or impairing national or collective interests' in the last assumption are the result of a hasty legal amendment in 2005 within the context of international arbitration claims that the Ecuadorian State was beginning to confront at that time. There is no case law providing clarity for its application. See such amendment in Law No. 2005-48, Official Register 532, 25 February 2005. ^ Back to section

5 Article 425, Constitution: 'The hierarchical order for the application of norms shall be as follows: The Constitution, international treaties and conventions, organic laws, ordinary laws, regional rules and district ordinances, decrees and regulations, ordinances, agreements and resolutions, and other acts and decisions of the public powers.' ^ Back to section

6 Article 417, Constitution: 'International treaties ratified by Ecuador shall be subject to the provisions of the Constitution. In the case of treaties and other international instruments on human rights, the principles pro human being, no restriction of rights, direct applicability and open clause established in the Constitution shall apply.' This principle has been developed further in article 5 of the Organic Code for the Judiciary, which states that: 'The judges, administrative authorities and officials of the Judiciary shall directly apply constitutional norms and those set forth in international instruments on human rights if the latter are more favourable to those established in the Constitution, even if not expressly invoked by the parties.' Organic Code of the Judiciary, Official Register Supplement 544, 9 March 2009. Back to section

7 Official Register Supplement 1201, 20 August 1960. Back to section

8 Official Register 43, 29 December 1961. Ecuador ratified the New York Convention resorting to the commercial and reciprocity reservations set out in article I(3). Back to section

9 Official Register 386, 3 March 1986. This Convention only pertains to disputes relating to investments between contracting states and nationals of other states, as specified in its provisions. Back to section

10 On 3 June 2009, the President of the Republic delivered a request to the Legislative and Auditing Committee of the National Assembly asking it to denounce the Washington Convention, claiming that it infringes the interests of Ecuador and violates article 422 of the Constitution. The request was considered by the National Assembly on 12 June 2009. Subsequently, the President of the Republic issued Executive Decree No. 1823 on 2 July 2009, where he resolved: 'To denounce and, therefore, to declare the termination of the Convention on Settlement of Investment Disputes ICSID.' Notice of the denunciation was served to ICSID on 6 July 2009. Back to section

11 Official Register 875, 14 February 1992. Back to section

12 Official Register 153, 25 November 2005. Back to section

13 https://secureservercdn.net/198.71.233.179/657.52e.myftpupload.com/wp-content/uploads/2021/03/PLAN_DE_GOBIERNO.pdf. Back to section

14 www.pge.gob.ec/index.php/infografias/asuntos-internacionales-y-arbitraje. Back to section

15 *Getting the Deal Through: Investment Treaty Arbitration*: Ecuador (Annex 14) . Back to section

16 *Corporación Quiport SA and others v Republic of Ecuador* (ICSID Case No. ARB/09/23); *Repsol YPF Ecuador SA and others v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador)*, (ICSID Case No. ARB/08/10); *Repsol YPF Ecuador SA v Empresa Estatal Petróleos del Ecuador (Petroecuador)* (ICSID Case No. ARB/01/10); *Murphy Exploration and Production Company International v Republic of Ecuador* (ICSID Case No. ARB/08/4); *City Oriente Limited v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)* (ICSID Case No. ARB/06/21); *Técnicas Reunidas SA and Eurocontrol SA v Republic of Ecuador* (ICSID Case No. ARB/06/17); *Occidental Petroleum Corporation and Occidental Exploration and Production Company v Republic of Ecuador* (ICSID Case No. ARB/06/11); *Occidental Petroleum Corporation and Occidental Exploration and Production Company v Republic of Ecuador* (ICSID Case No. ARB/06/11) Annulment proceedings; *Noble Energy Inc and MachalaPower Cía Ltd v Republic of Ecuador and Consejo Nacional de Electricidad* (ICSID Case No. ARB/05/12); *Empresa Eléctrica del Ecuador Inc (EMELEC) v Republic of Ecuador* (ICSID Case No. ARB/05/9); *Duke Energy Electroquil Partners and Electroquil SA v Republic of Ecuador* (ICSID Case No. ARB/04/19); *MCI Power Group, LC and New Turbine Inc v Republic of Ecuador* (ICSID Case No. ARB/03/6); *MCI Power Group LC and New Turbine Inc v Republic of Ecuador* (ICSID Case No. ARB/03/6) annulment proceedings; *IBM World Trade Corp v Republic of Ecuador* (ICSID Case No. ARB/02/10); *Burlington Resources Inc v Republic of Ecuador* (ICSID Case No. ARB/08/5) (formerly *Burlington Resources Inc and others v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador); Burlington Resources Inc v Republic of Ecuador*, ICSID Case No. ARB/08/5), *Occidental Exploration and Production Company v The Republic of Ecuador* (LCIA Case No. UN3467), *Perenco Ecuador Ltd v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)* (ICSID Case No. ARB/08/6), *Merck Sharpe & Dohme (IA) LLC v The Republic of Ecuador* (PCA Case 2012-10), *1. Chevron Corporation and 2. Texaco Petroleum Company v The Republic of Ecuador* (PCA Case 2009-23), *Albacora SA v La República del Ecuador* (PCA Case 2016-11), *1. EcuadorTLC SA (Ecuador) 2. Cayman International Exploration Company SA (Panamá) 3. Teikoku Oil Ecuador (Islas Caimán) v 1. República del Ecuador 2. Secretaría de Hidrocarburos del Ecuador 3. Empresa Pública de Hidrocarburos del Ecuador EP Petroecu* (PCA Case 2014-32), *Murphy Exploration & Production Company - International v The Republic of Ecuador* (PCA Case 2012-316), *Copper Mesa Mining Corporation (Canada) v The Republic of Ecuador* (PCA Case 2012-02), *1. Chevron Corporation and 2. Texaco Petroleum Company v The Republic of Ecuador* (PCA Case 2007-02/AA277), *Globalnet - Únete Telecomunicaciones SA and Clay Pacific SRL v The Republic of Ecuador* (UNCITRAL), *EnCana Corporation v Republic of Ecuador* (LCIA Case No. UN3481, UNCITRAL) (formerly *EnCana Corporation v Government of the Republic of Ecuador*), *Ulysseas Inc v The Republic of Ecuador* (UNCITRAL). ^ Back to section

17 *Burlington Resources Inc v Republic of Ecuador* (ICSID Case No. ARB/08/5) (formerly *Burlington Resources Inc and others v Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador)*, in which the investor was awarded 65 per cent of the costs; *MCI Power Group LC and New Turbine Inc v Republic of Ecuador* (ICSID Case No. ARB/03/6) Annulment Proceedings, investor awarded 100 per cent of the costs; and *Repsol YPF Ecuador SA v Empresa Estatal Petróleos del Ecuador (Petroecuador)* (ICSID Case No. ARB/01/10), Annulment Proceedings, investor awarded 100 per cent of the costs. ^ Back to section

18 https://www.regulations.gov/docket?D=USTR-2013-0013 ^ Back to section

19 https://downloads.regulations.gov/USTR-2013-0013-0037/content.pdf (p. 96). ^ Back to section

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