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## Featured Q&A: Ecuador Oil and Mining Arbitration

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**In a move not likely to be welcomed by foreign oil companies, Ecuadorean President Rafael Correa last week decreed an increase in the government's share of the companies' windfall oil profits from 50 percent to 99 percent. How do you expect the companies to react to the decree? How will planned contract negotiations between the government and the companies fare? What is the future of private investment in Ecuador's oil sector post-constitutional reforms?**

Ecuador may be called before international tribunals for its latest acts, not unlike Venezuela for its acts with respect to the oil sector. Ecuador is a party to two dozen bilateral investment treaties (BITs) whereby it consented to submission to the jurisdiction of the World Bank's International Centre for Settlement of Investment Disputes (ICSID). It cannot extract itself immediately from those treaties due to termination requirements and survival periods. Ecuador nonetheless announced this week that it will no longer consent to ICSID jurisdiction over disputes in the oil and mining sectors, citing Article 25(4) of the ICSID Convention. That article provides that an ICSID contracting state may notify ICSID of a 'class or classes of disputes which it would or would not

consider submitting to the jurisdiction of the Centre. Ecuador's declaration raises the question of whether it can effectively withdraw its prior consent to ICSID jurisdiction under BITs. ICSID precedents suggest not, which affected investors may interpret as an open door to arbitration despite Ecuador's latest steps. Moreover, most of Ecuador's BITs provide for non-ICSID arbitration options. And Ecuador's latest step does not stop pending oil sector ICSID arbitrations against Ecuador, such as the Occidental Petroleum case and the City Oriente case. The framework for the protection of investments put into place over many years is not easily undone.

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