

Canada-Ecuador FTA Strengthens the Investment Framework for Canadian Mining Investors

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On July 24, 2026, Canada and Ecuador signed the Canada-Ecuador Free Trade Agreement (the Agreement), an important milestone in the two countries' bilateral trade and investment relationship.¹ The Agreement remains subject to domestic ratification in both jurisdictions and will enter into force only once those procedures are complete. Once in force, it will include an Investment Chapter and an investor-state dispute settlement (ISDS) mechanism governing the treatment of each Party's covered investments and investors in the territory of the other.²

The Investment Chapter and Its Significance for Mining Investors

A central feature of the Canada-Ecuador FTA is its Investment Chapter, which establishes a framework for the treatment of covered investments and investors. The chapter imposes obligations relating to non-discriminatory treatment, minimum standards of treatment and expropriation, while recognizing the Parties' ability to regulate in pursuit of legitimate public policy objectives. It also establishes an ISDS mechanism under which qualifying investors may — subject to the conditions, limitations and procedural requirements set out in the Agreement — submit claims alleging breaches of the Investment Chapter to international arbitration.

These provisions are likely to be of particular interest to the Canadian mining sector. Ecuador hosts a number of Canadian mining investments, including significant gold and copper projects. Such projects typically involve substantial capital commitments, long development periods, and ongoing interaction with government authorities, local communities and other stakeholders. Permitting, regulatory measures, access to project sites, and other government conduct can therefore have significant implications for the development, operation or value of a mining investment.

In this context, the availability of ISDS may be an important factor in assessing sovereign risk. Subject to the requirements of the Agreement and the facts of a given dispute, a Canadian mining investor that alleges Ecuador has breached its Investment Chapter obligations in a manner affecting the investor's covered investment may submit a claim to international arbitration and seek compensation for the resulting losses. The Canada-Ecuador FTA is not yet in force, but recent experience under other Canadian investment agreements illustrates how these protections can operate in practice.

A Recent Reminder from Peru

In a recent arbitration under the Investment Chapter of the Canada-Peru Free Trade Agreement,³ Canadian mining company Lupaka Gold Corp. pursued claims arising from the loss of its investment in the Invicta gold project in Peru.⁴ The dispute followed blockades, occupation of the mine site, and the eventual loss of control of the project. The Arbitral Tribunal found that Peru had breached its treaty obligations, including the standards of fair and equitable treatment, full protection and security, and the prohibition against unlawful expropriation. It awarded Lupaka approximately US\$40.4 million in damages, plus interest, and ordered reimbursement of the company's legal costs and expenses.

The Lupaka award is instructive because it shows that investment treaty disputes in the mining sector do not arise solely from direct government expropriation or the cancellation of mining rights. They may also arise where prolonged social conflict, restrictions on access to a project, or a state's failure to adequately protect an investment materially impair its value. These risks are not unique to Peru.

Looking Ahead

As the Agreement moves through ratification in Canada and Ecuador, mining companies should consider how its investment provisions may intersect with investment structuring, project financing, risk allocation and long-term development strategy. While the scope and application of the treaty's protections will turn on the facts of a particular dispute, the Investment Chapter will, once in force, give Canadian mining investors an additional avenue to seek compensation for losses arising from alleged breaches of Ecuador's treaty obligations.

¹ Global Affairs Canada, "Canada and Ecuador Sign a Free Trade Agreement" (24 July 2026), online: <https://www.canada.ca/en/global-affairs/news/2026/07/canada-and-ecuador-sign-a-free-trade-agreement.html>

² Free Trade Agreement Between Canada and the Republic of Ecuador, signed 24 July 2026, online: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ecuador-fta-ale-equateur/index.aspx?lang=eng>.

³ Canada-Peru Free Trade Agreement, signed 29 May 2008, entered into force 1 August 2009, online: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/peru-perou/fta-ale/index.aspx?lang=eng>.

³ *Lupaka Gold Corp. v. Republic of Peru* (ICSID Case No. ARB/20/46), Award, 30 June 2025.

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