

## Case Note

### **RUNAWAY TRIBUNAL? AN ASSESSMENT OF THE *ECO ORO* TRIBUNAL'S OPINION ON THE GENERAL EXCEPTIONS**

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#### **ABSTRACT**

*After an explosive growth of both the numbers of international investment agreements (hereinafter "IIAs") and investment treaty arbitration cases in the 90s and early 2000s, a new trend emerged to rebalance the investment protection and other objectives. This trend has led to the insertion of various new provisions or clarifications in the IIAs, aiming at reconciling the sometimes-conflicting objectives of investment protection and to regulate for environmental protection or for sustainable development. One important mechanism introduced is the general policy exception. Canadian IIAs, for instance, are the frequent tenant of this type of provisions.*

*While the general exception clauses in the IIAs are potentially influential, it had been largely "missing in action," until recently. In the Eco Oro arbitral decision, the interpretation and application of the general exception clause in the Canada–Colombia free trade agreement (FTA) was the subject of heated debate. This case*

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*provides a great opportunity to assess the utility and the policy implications general exception clauses might have.*

*This article provides an introduction to the Eco Oro case, focusing on the parties and the tribunal's construction of the relevant general exception clause. The article then critically assesses the tribunal's analysis. The authors are of the opinion that the tribunal made a mistake in considering the general exception as merely permissive. However, such an erroneous decision might still have profound implications for the future of IIA drafting and policy making.*

**KEYWORDS:** *investor-state arbitration, bilateral investment treaty, international investment agreements, general exceptions*