

## Burford sells interest in Argentina award

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[Sebastian Perry](#)

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Burford Capital says it has made a gain of US\$94 million by selling its interest in the proceeds of an ICSID award against Argentina – withdrawing from a dispute where its role as third-party funder led the state to complain of fraud.

Today, Burford announced it has entered into a definitive agreement to sell its entire entitlement in the *Teinver v Argentina* matter for US\$107 million in cash. The funder says it invested US\$12.8 million in the case, meaning it has secured a 736% return on its investment. The transaction is expected to close by 22 March.

The identity of the buyers has not been disclosed.

Burford CEO **Chris Bogart** says, “The Teinver transaction represents a further step forward in our development of a secondary market for litigation and arbitration risk. It is efficient for us to move investments into the secondary market as they mature, and obtain liquidity to continue to make new investments at the rapid pace we are currently experiencing.”

Three member companies of Spanish travel group Marsans filed their ICSID claim in 2008 after Argentina nationalised their interests in two airlines, Aerolíneas Argentina and Austral. The claimants later became insolvent and entered into a funding agreement with Burford in 2010 to finance the arbitration.

In July 2017, a tribunal majority made up of former International Court of Justice judge **Thomas Buergenthal** and Canada’s **Henri Alvarez QC** ordered Argentina to pay more than US\$320 million plus interest after ruling that the nationalisations violated the Argentina-Spain bilateral investment treaty. Argentina’s arbitrator **Kamal Hossein** of Bangladesh dissented.

The award represented around 20% of the US\$1.6 billion the companies had claimed in the case.

Argentina’s application to annul the award is pending before an ICSID ad hoc committee chaired by **Alexis Mourre**, the president of the ICC International Court of Arbitration. He is sitting alongside Peruvian **Fernando Cantuarias Salaverry** and Mexico’s **Ricardo Ramírez-Hernández**, a former member of the World Trade Organization Appellate Body.

In the “unlikely” event that the award is annulled, Burford says the sale transaction could be rescinded at the option of the buyers but that it would retain a US\$7 million fee and “have its original entitlement back”, freeing it to pursue the claim again. A decision on the annulment application is expected in the second half of 2019.

Burford says the funding agreement entitled it to receive more than US\$100 million from the award (last year it put the figure at around US\$140 million).

Bogart says, "We believe that the award would have been discounted to achieve resolution of this matter in any event, as is commonplace. Achieving certainty and immediate cash for this investment, at an attractive price, is a highly desirable outcome for us."

Burford's role as funder had been a major source of friction in the ICSID case. Argentina alleged in the arbitration that the funding agreement, as well as an agreement assigning some of the proceeds of the ICSID award to another Marsans entity, amounted to an attempt to defraud the Spanish bankruptcy courts.

Argentine prosecutors made similar allegations in a [criminal complaint](#) lodged in 2015, which targeted the claimants, Burford and lawyers from King & Spalding, the firm representing the Marsans companies in the ICSID case. Those proceedings remain pending, however.

Argentina's fraud claims were rejected by the ICSID tribunal, which noted that the funding agreement had been disclosed to the Spanish courts. But Hossain in his dissenting opinion was critical of the role of third-party funding in the case, calling it "champerty in its most odious form", and said Burford was not an investor entitled to protection under the BIT.

According to press reports, Argentina has also invoked Burford's role in its arguments for annulment of the award, suggesting the funding agreement essentially made the venture capital group the main beneficiary of the proceeds of the award, which the state calls "an abuse of the ICSID system".

Earlier this month, Burford announced plans to set up a new insurance business to address adverse costs risk in large commercial litigation and arbitration matters. The funder says there is currently limited capacity in the insurance market for adverse costs insurance once defendants' exposure approaches £20 million. The new business, Burford WorldWide Insurance, will be established in Guernsey. Regulatory approval is pending.

Last month, the English High Court [ordered](#) three Burford-funded investors in a gas terminal in Karachi to pay security of £400,000 while they pursue a challenge to an UNCITRAL award that rejected their US\$640 million investment treaty claim against Pakistan.

The judge was not satisfied that a series of letters from Burford promising to pay Pakistan's costs in the event that the challenge failed amounted to a legally enforceable commitment that justified denying Pakistan's request for security. The investors were not, however, required to post additional security of £8 million, representing the costs they were ordered to pay Pakistan in the arbitration.

*Teinver SA, Transportes de Cercanías SA and Autobuses Urbanos del Sur SA v Argentine Republic* (ICSID Case No. ARB/09/1)

*In annulment proceedings*

Ad hoc committee

- Alexis Mourre (France) (president)
- Fernando Cantuarias Salaverry (Peru)
- Ricardo Ramírez-Hernández (Mexico)

Counsel to the claimants

- King & Spalding

Partners Roberto Aguirre-Luzi, Doak Bishop, Craig Miles and Silvia Marchili, counsel Isabel Fernández de la Cuesta and Esteban Lecesse and consultant Esteban Sánchez in Houston

Counsel to Argentina

- Procuración del Tesoro de la Nación

Carlos Francisco Balbín in Buenos Aires

*In the arbitration*

Tribunal

- Thomas Buergenthal (president) (US)
- [Henri Alvarez QC](#) (Canada)
- Kamal Hossain (Bangladesh)

Counsel to Teinver, Transportes de Cercanías and Autobuses Urbanos del Sur

- King & Spalding

Partners Roberto Aguirre-Luzi, Doak Bishop, Craig Miles and Silvia Marchili, counsel Isabel Fernández de la Cuesta and Esteban Lecesse and consultant Esteban Sánchez in Houston; and consultant Margrete Stevens\* in Washington, DC

\* *No longer with the firm*

- Fargosi & Asociados

Diego Fargosi and Héctor Alonso

- Bruchou Fernández Madero & Lombardi

Partner Enrique Bruchou in Buenos Aires

Counsel to Argentina

- Procuración del Tesoro de la Nación

Carlos Francisco Balbín (as of 23 December 2015), Angelina Abbona (until 22 December 2015)

Expert witnesses

*For the claimant*

- Stephen M Schwebel
- Andrés Ricover
- Alberto Bianchi
- Aurora Martínez Flórez
- Manuel A Abdala of Compass Lexecon
- Pablo T Spiller of Compass Lexecon

*For Argentina*

- Vicente Muñoz Pérez
- Benedict Kingsbury
- Ismael Mata
- Saul N Keifman
- Diego Bleger, KPMG
- Raúl Saccani, KPMG
- Gabriel Taira, KPMG
- Marina Donato
- Juan José Cigarrán, Cigarrán Abogados
- Scott Hornick, Oliver Wyman
- Vikram Krishnan, Oliver Wyman

