

Country Guide

Ecuador

Prepared by

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DOING BUSINESS

Ecuador

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PBP presents a general guide on the relevant regulatory aspects for doing business in Ecuador. This guide is not intended to be an exhaustive review of the regulations applicable to a specific sector of the economy, nor is it directed at any particular client, nor can it be considered as a piece of legal advice. This product is for informational purposes only.

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01

INTRODUCTION/OVERVIEW OF THE JURISDICTION

1

INTRODUCTION/ OVERVIEW OF THE JURISDICTION

Year 2021 began in Ecuador with expectations of a jump-start of the economy after the losses suffered in 2020, and a newly elected President, Mr. Guillermo Lasso, was inaugurated in May.

The last four years were focused on ensuring legal and fiscal stability to attract foreign investment as a crucial public policy element, hence the new administration is tasked with continuing these efforts to further secure foreign investment and important financing.

The government's first actions intend to create the best possible business climate with initial executive orders aimed at: (i) launching mass COVID-19 vaccination efforts; (ii) reducing regulatory hurdles for administrative procedures and for imports entering the country; (iii) rejoining the ICSID Convention.

Regarding the government's response to the COVID pandemic, the vaccination plan for 2021 is already underway aiming to resume the country's productive activities. The initial goal is to vaccinate 60% of the adult population by the end of September.

Ecuador's GDP took a significant hit in 2020 falling by an estimated 8%, but preliminary figures for 2021 consider a 2.8% growth.

After a second round of mostly full lockdown during March-May, the government has opted for less restrictive measures to be controlled by the local authorities. Therefore, public and private activities in most sectors are expected to continue in 2021 with the public sector workforce gradually returning to their offices as vaccination makes

progress.

Since stimulus packages are lacking in Ecuador due to the economic contraction, important legislation has been enacted - especially concerning labor rules - in order to aid private entities. New emergency contracts include very important provisions to promote employment but with flexible terms and indemnifications that reduce risks for employers. Remote work has gained importance and prompted technification in many areas. Accordingly, labor regulations have also been updated to clearly outline the new working conditions.

The IMF's help to cover a significant public deficit has also led to considerable efforts to cut down unnecessary public expenditure. The extraordinary events of 2020 have also resulted in elimination of public agencies alongside efforts to reduce regulatory requirements.

A combination of private investment promotion as a means to revamp the economy with more technical controls on public spending has improved the external perception of Ecuador and has been the basis for agreements with external entities such as the IMF.

Under the new administration, the public agenda and public policies are expected to be focused on objectives such as:

- Increasing productivity.
- Reducing the public debt and deficit.
- Income tax exemption for new investments.
- Promoting investment and job creation.
- Increasing Ecuador's credibility in foreign

- markets.
- Increasing revenues from public assets and infrastructure.
- Payment of Ecuador's international obligations.
- Increasing oil production; promoting responsible mining operations.

Ecuador's ongoing efforts to augment the country's productivity are also a priority objective. Since the U.S. dollar is Ecuador's currency (which is credited with providing economic stability), it is crucial to increase the country's participation in foreign markets with competitive local products. The commercial treaty with the European Union continues to bring important opportunities in that regard.

Moreover, in December 2020 negotiations for a commercial agreement between Ecuador and the United States headed by the Office of the United States Trade Representative have led to an initial phase agreement. The United States is Ecuador's principal destination for non-oil related exports, and favorable conditions are key to local industries.

Ecuador has also showed interest in joining the Pacific Alliance with Chile, Colombia, Mexico and Peru. As part of its effort, Ecuador has rejoined the [ICSID](#) Convention.

Important legal reforms such as those to the Code of Commerce which incorporated regulations on distribution, agency and franchising for several contracts previously ignored by Ecuadorian law continue to strengthen commercial relations within the country and with foreign counterparts.

A legal reform to the Law on Companies to include the new SAS (simplified joint stock) corporation has prompted a wave of incorporations of companies free from past restrictions such as notarial and registration expenses and delayed authorizations. Those reforms have also updated important aspects of corporate law in Ecuador to keep up with neighboring countries, allowing shareholders to include truly binding shareholders agreements and, in general, better corporate governance.

Due to the necessity to cover the deficit, several public entities have continued to promote private investment by implementing strategies such as public works concessions and public-private partnerships. Concessions of the public infrastructure have been announced as part of these efforts and interesting developments are anticipated.

In the hydrocarbon industry, the government expects to increase production and has entered into several contracts with private companies offering incentives for investments that allow incremental production. A potential recovery of international oil prices, if the expected increase in demand occurs, would also bring important income and would boost activities in general.

The mining industry has been making slow headway, with many important international players setting up shop in the country. Both public and private entities are acknowledging the importance of developing this industry to include more peaceful coexistence between miners and environmental activists. Gold and copper are the more prominent resources in the country. In 2020, exports increased and mining was one of the few industries which grew to some extent. Projections for 2021 indicate a 70% jump from the previous year.

Although some industries - such as the food, medicine, agrochemical and telecommunications industries - have powerful regulatory agencies that require significant initial licenses, important reforms aim to expedite most day-to-day procedures, to incorporate electronic filing, and to waive certain requirements. This has been especially palpable in the pharmaceutical industry and in the sanitary registration of its products. Furthermore, as a result of the disruption caused by the pandemic, many of those agencies have been implementing electronic filing options. In respect of the telecommunications market, the government aims to increase internet access. A recent reform of the Telecommunications Law offers advantages to tech companies and reduces spectrum use rates, among other measures.

The M&A market was on hold during most of 2020 but resumed in 2021. Acquisition of medium and large local companies by foreign investors seems a prevalent and important trend. Local parties have gained important knowledge on such procedures in the last decade, and international interest remains high.

Ecuador is also considered a developing market for app-based businesses and fintech, with some regional and local players welcoming success. While no specific legislation exists to date, the new administration is regarded as keen to allow these industries to prosper alongside more traditional ones.

Similarly, the much-delayed Data Protection Law was unanimously enacted in May. This Law is generally in line with international standards and

concepts and allows local companies to implement internal processes during the next two years. This will require changes by certain businesses which regularly gather and manage personal information, including changes to internal manuals, policies, contracts, appointment of data protection officers, and new reporting obligations.

Regarding dispute resolution matters, Ecuador is a signatory of the New York Convention. It has a long-standing arbitration law and approves ADR methods in general. International companies have legal assurance that choice of law and jurisdiction clauses are respected in local courts. The local court system has been challenged by the COVID emergency and has had some trouble adjusting to electronic means, but is gradually returning to pre-emergency levels of response.



02

GENERAL REGULATION OF BUSINESS

2

GENERAL REGULATION OF BUSINESS

2.1 Government structure

As set forth in the Constitution, political power in Ecuador is divided into five main branches:

- 1. Executive Branch:** It is exercised exclusively by the President of the Republic who is head of state and head of government and is responsible for the public administration.

The presidential term of office lasts four years and the President can be reelected only once (consecutively or non-consecutively). The President has broad authority to define and direct public policies of the Executive Branch and the government. He has sole authority to propose tax legislation and on the administration of strategic sectors of the economy.

The President oversees the institutional organization and is able to appoint or remove cabinet ministers and to create, eliminate, merge or modify ministries, entities and coordination bodies.

- 2. Legislative Branch:** It is exercised exclusively by a unicameral National Assembly that has its seat in the capital city, Quito, and comprises (i) fifteen assembly members elected during national elections, (ii) two assembly members from each province, in addition to (iii) assembly members from regions, metropolitan districts and foreign constituencies.

Its main powers include approving international treaties; enacting, codifying, amending and repealing laws; overseeing the conduct of public authorities, and interpreting the law

with general effects.

- 3. Judicial Branch:** The Judicial Branch comprises jurisdictional, administrative, auxiliary and autonomous bodies. The power to administer justice emanates from the people and is exercised by the bodies of the Judicial Branch.

Without prejudice to other bodies with equal powers, the jurisdictional bodies are: (i) The National Court of Justice; (ii) Provincial Courts; and (iii) Judicial Units and Courts. Alternative dispute resolution, mainly through arbitration and mediation, is possible and is recognized by the Constitution.

- 4. Transparency and Social Control Branch:** It comprises (i) the Citizen Participation and Social Control Council, (ii) the Ombudsman's Office, (iii) the Office of the Comptroller General of the State, and (iv) the Superintendencies. These entities have legal personality and administrative, financial, budgetary and organizational autonomy.

Its functions include ensuring adequate citizen participation in transparency processes and in the fight against corruption. Its powers encompass accountability mechanisms for public sector institutions and entities, contributing towards citizen oversight and social control processes.

Most importantly, this Branch selects the main authorities of the above-mentioned entities.

5. Electoral Branch: This branch is responsible for guaranteeing the exercise of political rights and comprises the National Electoral Council and the Electoral Dispute Settlement Court. Both bodies are headquartered in Quito and

have national jurisdiction, administrative, financial and organizational autonomy, and individual legal personality.

2.2 Legal system, courts and arbitration

The procedure for enacting a law begins when a bill is submitted to the Presidency of the National Assembly which must then forward it to the Legislative Administration Council (CAL for its Spanish acronym). The Council is allowed thirty days to issue its opinion and verify that the bill complies with minimum formal requirements. Once the bill is admitted, it is sent to a committee specialized in the matter which must submit a report on the bill.

The first debate begins when the report is submitted and the Assembly members present comments and/or suggests changes. The committee examines the comments and issues a second report within a maximum 45 days (with the possibility to request an extension).

After the second report, a second debate takes place when votes are cast. The Assembly may approve or reject the bill at this stage. Finally, if approved, the bill is sent to the President of the Republic for review and to decide whether to object (totally or partially) or to confirm it. If confirmed, the bill will be published in the Official Gazette and will enter into force as a law.

As regards the judicial system, Ecuador follows a civil law system which is common in Latin American countries. In recent years it has been perfecting the implementation of an oral procedural system. In general, concerning civil, labor and commercial matters, jurisdiction is distributed according to territory, judicial level, person and subject matter.

In accordance with the provisions of the Organic Code of the Judiciary, the following are the jurisdictional bodies:

- 1. National Court of Justice:** It comprises twenty-one justices organized into specialized divisions. The Court exercises jurisdiction throughout the national territory and is mainly responsible for hearing appeals of cassation.
- 2. Provincial Courts:** They are competent to hear and resolve appeals filed before First Instance Judicial Units. There is a Provincial Court for each province, except in the Galapagos Islands whose Provincial Court is in Guayaquil.
- 3. Judicial Units and First Instance Courts:** They are competent to hear proceedings filed within their respective jurisdiction (municipalities) according to territory, judicial level, person, and subject matter.

Regarding arbitration and mediation, the Arbitration and Mediation Law provides that the parties may mutually agree to submit existing or future disputes to be resolved by arbitration tribunals (at an arbitration center) or by independent arbitrators.

Arbitration clauses are mostly included in civil and commercial contracts with a degree of complexity or relevance. After recent reforms to the Law, investment contracts for more than ten million U.S dollars entered into between private and

public entities must include arbitration to resolve disputes by implementing a local or international arbitration clause.

Ecuador is a signatory of the Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and recognizes that foreign arbitral awards may be enforced locally.

Recent reforms to the Ecuadorian Arbitration and Mediation Law, enacted through the new Law on Productive Promotion, Investment Attraction and Job Creation, are significant evidence that public policies have shifted towards allowing recognition and enforcement of foreign arbitral awards without significant procedural hurdles.

2.3 Foreign Investment Rules

According to the Organic Code of Production, Trade and Investment, foreign investment is recognized as equal to local investment and defined as investment owned or controlled by foreign individuals or legal entities domiciled abroad or involving capital not generated in Ecuador.

The foreign investment regime in Ecuador is quite permissive insofar as it imposes a non-discriminatory policy towards international investment. Both domestic and foreign investors have the right to enjoy equal conditions with respect to management, operation, expansion and transfer of their investments and cannot be subject to arbitrary or discriminatory measures.

Specifically, foreign investments and investors enjoy full protection in that they have the same protection that Ecuadorians receive within the national territory. Hence, tax legislation does not distinguish between national or foreign investments.

International legal entities that decide to invest in Ecuador have the chance to incorporate their company as a local entity or as a branch. They may also establish joint ventures, trusts or holding companies in order to link their interests to already established companies.

The Production, Trade and Investment Code also

states that investors may enter into investment contracts with the government upon starting a project in the country. Such contracts provide for tax stability and have a term of up to fifteen years.

If these investment contracts are valued over ten million U.S. dollars, an arbitration clause (whether for local or international arbitration) becomes mandatory and will be governed by UNCITRAL, ICC or CIAC rules.

If an investor is interested in joint projects with the government, the Organic Law on Incentives for Public-Private Partnerships provides additional incentives including:

- Stability of contracts;
- Exemption from the currency remittance tax on payment of imports, loans, dividends;
- Exemption from tariffs on imports of goods and services for the project; and
- International arbitration (with a Latin American country as the seat of arbitration).

Public-private partnerships include performance of specific public projects and concessions of public works or services.

2.4 Monetary policy/foreign exchange controls

Under the Organic Monetary and Financial Code, the Ecuadorian monetary and financial system consists of the entities responsible for policy formulation, regulation, implementation, supervision, control, and financial security as well as public, private, popular and solidarity entities that carry out monetary and financial activities.

The Financial Policy and Regulation Board is the public entity responsible for the formulation of policies and regulation of credit, financial, securities, insurance and health care services. This entity belongs to the Executive Branch and enjoys administrative, financial and operational autonomy.

The Central Bank of Ecuador is exclusively responsible for implementing the monetary regime. It is responsible for managing policies formulated by the Monetary Policy and Regulation

Board aimed at promoting and maintaining a stable monetary system. This is to preserve the integrity of dollarization, including the safe and efficient functioning of payment systems and means of payment.

Regarding foreign monetary exchange controls, the transfer or remittance of foreign currency abroad, whether in cash or by means of checks, transfers, withdrawals or payments of any nature, is subject to the currency remittance tax equivalent to 5% of the total value of the currency transferred or sent.

The ISD must be paid by all individuals and private, national and foreign companies that make transfers, shipments or that are included in legal presumptions, according to the provisions of the current legal system.

2.5 Banking system

The financial system comprises banks, savings and credit cooperatives and other financial institutions. The Ecuadorian banking system is regulated and controlled by the Superintendency of Banks whose mission is to safeguard the interests of customers and to strengthen the system. Those institutions and regulatory bodies aim to facilitate and ensure the movement of money and the payment system within the economy.

Private banks offer their users a variety of services, including:

- 1. Loans:** To assist in the operation and activation of the economy by promoting liquidity in the market and expanding business.

- 2. Real estate loans:** Focused on making productive operations viable, offering specific conditions tailored to the needs of the specific case, facilitating growth in the real estate market.

- 3. Credit cards:** To optimize the acquisition of goods and market agility. Credit card services also offer an easier form of payment by offering the option of credit deferral.

- 4. Letters of guarantee:** Which provide financial backing from the bank and payment of a fixed amount to the beneficiary.

- 5. Time deposits:** These are financial operations that keep monetary resources tied up for

a period of time in exchange for a fixed or variable financial income.

Public and private financial sector entities are obliged to adopt control measures aimed at preventing and mitigating the risks of transactions being used to launder assets and/or finance terrorism and other crimes.

Prevention measures must cover all kinds of financial services or products (irrespective of whether they are made in cash) as well as all kinds of permanent or occasional clients, shareholders, directors, officers, employees, suppliers and users of the entity in the public and private financial sectors.

Public and private financial sector entities must,

within their internal regulations, have mandatory policies and procedures to prevent money laundering and the financing of crimes such as terrorism.

There are two very important aspects in banking activities:

- Shareholders of banks (if they own 6% or more of their shares) cannot hold shares or investments in other industries. If they do, they will be required to divest from the banks in which they hold those shares.
- Shareholders, CEOs and members of the Board of Directors may be personally liable in case of bankruptcy.

2.6 Personal liability laws

Liability arising from tort (understood as acts or omissions committed by a person due to lack of due care or willful misconduct) imposes an obligation on the perpetrator to compensate the damage. Ecuadorian legislation provides for compensatory damages in the following cases only: (i) direct damages; (ii) loss of profit; (iii) pain and suffering. There are no consequential or punitive damages.

If damage is caused by more than one individual, the Civil Code states that the perpetrators will be jointly and severally liable.

Restitution must be provided for the following actions in particular:

1. Whoever recklessly causes explosions or combustion.
2. Whoever recklessly fires a firearm.
3. Whoever removes the slabs of a ditch or a pipe in a street or road without taking the necessary precautions to prevent passers-by

from falling during the day or at night.

4. Whoever is obliged to build or repair an aqueduct or bridge that crosses a road, the state of which can cause harm to those traveling on it.
5. Whoever manufactures and puts into circulation products, objects or artifacts which cause accidents due to manufacturing or construction defects.

Moreover, any violation of a reasonable duty of care may lead to civil liability.

The Civil Code also recognizes the right to compensation for those subject to pain and suffering if this is justified by the seriousness of the damage suffered. Those who affect the reputation of others by any form of defamation, or who cause injuries, commit assault, provoke illegal or arbitrary arrests or detentions, or unjustified prosecutions, and, in general, physical or psychological suffering such as anguish, anxiety,

humiliation or similar offenses, are specifically obliged to provide restitution.

In the event of damage attributable to another person, the victim has four years to claim the compensation; otherwise the action will be barred

by the statute of limitations.

Compensation for damages includes consequential damages and loss of profit whether arising from an unfulfilled obligation, an imperfectly fulfilled obligation, or delayed performance.

2.7 Anti-money laundering and countering financing of terrorism laws

The main laws for the prevention of money laundering and financing of terrorism are:

(i) The Law on Anti-Money Laundering and Financing of Crime (with its respective Regulations); (ii) The Rules on Anti-Money Laundering and Financing of Crime Directed to Reporting Entities under Supervision of the Financial and Economic Analysis Unit; (iii) The Rules on Prevention of Money Laundering, Financing of Terrorism and Other Crimes.

The Financial and Economic Analysis Unit (*UAFE* for its Spanish acronym) is the technical entity responsible for collecting information and reporting on, and executing national policies and strategies for, prevention and eradication of money laundering and financing of crimes. It has operational, administrative and financial autonomy. Its summary jurisdiction is attached to the Ministry for Economic Policy Coordination.

Under the money laundering treatment regime, entities that are prone to suffer from these types of illegal activities must comply with the preventative procedures. The following entities are obliged to observe and comply with the regime:

1. Institutions of the financial and insurance system.
2. Stock exchanges and brokerage houses.
3. Fund and trust administrators.

4. Cooperatives, foundations and non-governmental organizations.
5. Individuals and legal entities habitually engaged in selling vehicles, vessels, ships and aircraft.
6. Companies engaged in services for local or international transfer of money or securities, postal packages, couriers, including their operators, agents and agencies.
7. Tourist agencies and tour operators.
8. Individuals and legal entities habitually engaged in real estate investment, brokerage and construction.
9. Racetracks.
10. Pawnshops.
11. Dealers in jewelry, precious metals and precious stones.
12. Dealers in antiques and works of art.
13. Notaries.
14. Artistic promoters and organizers of raffles.
15. Real estate and commercial registrars.

Individuals or legal entities legally required to comply with established prevention policies are obliged to submit the corresponding information on a regular and timely basis:

1. Request and register through reliable and trustworthy means the identity, occupation, economic activity, marital status and home or work addresses of their permanent or occasional clients.

In the case of legal entities, registration must include certification of legal existence, capacity to operate, list of partners or shareholders, amount of shares or participations, corporate purpose, legal representation, domicile and other documents that establish their economic activity. Regulated entities of the financial and insurance system must keep the records for ten years after the date of termination of the last transaction or contractual relationship.

2. Keep registered accounts and operations; consequently, the entities cannot open or keep encrypted accounts or investments of anonymous nature, nor authorize or carry out transactions or operations that are not registered, except for those expressly authorized by law.
3. Register individual operations and transactions for amounts of USD 10,000 or more, or its equivalent in other currencies, as well as multiple operations and transactions which, in the aggregate, are equal to or greater than said value when they are carried out for the benefit of the same person within a thirty-day period. The obligation to keep a register will include

electronic transfers with their respective messages throughout the payment chain. The above must be reported to the UAFE within fifteen days after the end of each month.

4. Under personal and institutional liability, report any unusual and unjustified economic operations or transactions to the UAFE within four days from the date on which the compliance committee of the corresponding institution becomes aware of such operations or transactions.
5. Report its own national and international operations for USD 10,000 or more or the equivalent in other currencies, to the UAFE within fifteen days after the end of each month.

Agents that are required to periodically report their operations to the UAFE will be fined in case of failure to comply with one of their obligations, without prejudice to the criminal actions that may arise from commission of an infraction. Fines for non-compliance are imposed in proportion to net worth, invoicing volume and other parameters.

2.8 Contract law

Regulations governing contracts are included in the Civil Code. Even for commercial matters, the Commercial Code states that Civil Code guidelines apply with regards to contracts, their execution, performance and form of termination.

Contracts in Ecuador are considered a law for the parties and must be performed in good faith. Therefore, contracts are binding in respect of what is expressed in them, but also for all things arising precisely from the nature of the obligation or that, by law or custom, pertain to it.

In each contract, distinctions are made between things concerning its essence and to its nature and things that are purely incidental. The essence of a contract comprises such things that, if lacking, invalidate the contract or turn it into a different contract.

According the Civil Code, a debtor is in default when one of the following circumstances occurs:

1. When it has failed to perform the obligation within the stipulated term, except in special cases when the law provides that performance

will be required from the debtor in order for the debtor to be deemed in default;

2. When it has not been possible to give or perform the matter except within a certain period of time and the debtor has let that period elapse without giving or performing the matter; and
3. In other cases, when the creditor has filed a suit for payment through the courts against the debtor.

However, in bilateral contracts neither party may be considered in default while the other party has not fulfilled its obligations. If one of the parties is in fact in default, damages are due from that

moment, or, in case of a negative covenant, from the time of the breach.

Termination of the contractual relationship depends on the will of the parties and the provisions of each specific contract. However, the most common grounds for termination are:

- a. Fulfillment of the contractual obligations.
- b. By mutual agreement of the parties.
- c. Unilaterally (if provided for in the contract).
- d. By final judgment of a jurisdictional authority declaring nullity, rescission or termination of the contract.
- e. Due to breach by one of the parties.

2.9 Anti-bribery and corruption laws

In its efforts to fight actions that affect the efficiency and transparency of public administration, Ecuador has ratified the Inter-American Convention Against Corruption (1996) and the United Nations Convention Against Corruption (2005).

The Criminal Code defines the crimes of embezzlement, unfair enrichment, extortion, bribery, influence peddling, offer to carry out influence peddling, money laundering, conspiracy, and organized acts of corruption.

Aside from the penalty imposed on an individual or legal entity that commits one or more of these crimes, the legal system reinforces the penalty by prohibiting convicted persons from further engaging with the State. For instance, the Organic Law on Public Service provides that persons charged with an enforceable conviction for one of these crimes are prohibited from holding any form of position or public office.

Moreover, the Criminal Code declares that persons who have been convicted of corruption offenses will not be able to contract with the State, nor will they have the civil right of participation in political processes.

Supervision and severity of the imposition of penalties have been further strengthened by the publication of reforms to the Criminal Code in February 2021. Under this improved scheme, the report from the Comptroller General of the State on the alleged event constituting a crime can be used as a key element of the investigation and may even be expanded to provide sufficient elements of conviction for determination of criminal liability and the subsequent criminal action.

The most eye-catching reform, however, is the setting of criminal liability for acts of corruption in the private sector. According to it, any director, general manager, administrator,

principal executive, shareholder, partner, legal representative, attorney-in-fact, advisor, auditor, defense attorney or any employee who exercises management positions at a legal entity existing under private law and, who intentionally (i) accepts, receives or solicits any personal material benefit in economic, financial or commercial transactions; (ii) promises, offers or grants donations, gifts, presents, promises, rights, dues, contributions, rents, interests, among other material benefits; or (iii) abuses or arbitrarily disposes of private assets or patrimony, may be liable as a criminal offender.

Lastly, the reform imposes personal liability for citizens who have been sentenced for corruption or acts that harmed the public administration. For the crimes of embezzlement, unjust enrichment, extortion, bribery, influence peddling, offers to engage in influence peddling and front running, obstruction of justice, overpricing in public procurement, acts of corruption in the private sector, money laundering, conspiracy and organized crime, the convicted person will be liable with its own patrimony for integral reparation to the State.

2.10 Protection against nationalization or expropriation

Confiscation, understood as nationalization or expropriation without due payment, is unconstitutional in Ecuador.

The regional, provincial, metropolitan and municipal governments may declare the expropriation of property in order to continue social development plans, promote urban development and social housing programs, sustainable management of the environment, collective welfare, or for reasons of public utility or social interest. However, all types of arbitrary confiscation are prohibited and therefore a public authority interested in obtaining certain property must observe fair appraisal, compensation and payment in accordance with the law.

For a property to be rightfully expropriated, it must be declared of public interest by the highest authority. This administrative decision must be notified to the property owners within three days of being issued.

The law (Organic Law on the National Public Procurement System) imposes the obligation on a State authority interested in carrying out an expropriation to negotiate directly with the owner during a maximum of thirty days after notice of the declaration.

However, occupation by the State may be immediate as soon as the agreed value is paid or otherwise a deposit, is made. In addition, the agreed price for the expropriation cannot exceed 10% of the value of the appraisal registered in the municipal cadaster, or the value on which the property tax of the year prior to the announcement of the project was paid (in the case of construction works), or of the declaration of public utility and social interest for other acquisitions.

Former owners who wish to challenge the amount paid for their real estate or do not agree with the procedure adopted by the authority to expropriate their land, may initiate proceedings at the Administrative Court.



03

FOREING INVESTMENT

3

FOREIGN INVESTMENT

Foreign investment in Ecuador is subject to the principle of nondiscrimination, which means that it will have the same guarantees and protections as Ecuadorian investment. Investment is not

considered foreign when the final beneficiary or owner of the entity making the investment is an Ecuadorian national.

3.1 When is governmental consent required?

Foreign investment can be made in every economic sector in Ecuador without government consent. To protect foreign and national investment, investors may decide to enter into an investment agreement with the Ecuadorian government. Investment

agreements will provide investors with tax benefits, legal protection and other advantages. Negotiations of investment agreements take approximately six to eight months.

3.2 Exemptions

All sectors considered strategic are under government administration and control. Any person wishing to invest in these sectors must be delegated by the government in accordance with the regime for public procurement contracts.

According to the Ecuadorian Constitution, sectors that are considered strategic are:

- i) Energy
- ii) Telecommunications
- iii) Non-renewable natural resources
- iv) Transport and refining of hydrocarbons
- v) Biodiversity
- vi) Radio spectrum
- vii) Water

3.3 Process

The process for investing in the strategic sectors listed in paragraph B will mainly depend on the government entity in charge of the corresponding sector. Investments in certain strategic sectors are generally made by state-owned companies. In some cases, these may involve the creation of new vehicles with foreign or national private investors, but most of the shares must be owned by the

government.

In some cases, the government may also choose to delegate the performance of projects in strategic sectors.

In any event, private investors who are interested in strategic sectors must go through the relevant public procurement process.

3.4 Timing

Time will depend on the applicable process.

3.5 Local equity conditions and foreign equity limits

There are no general limitations or conditions on local equity or foreign equity. Ecuadorian companies may be 100% owned by foreign investors.

Regarding companies in the Galapagos Islands, the majority of shares must be owned by a resident of the Islands.

3.6 Restrictions on doing business with nationals, residents or non-residents

There are no restrictions on doing business with nationals, residents, or non-residents. Certain regulated activities require specific authorizations

to be able to conduct a business, for example, insurance and reinsurance activities.

3.7 Current major investment incentives

The Ecuadorian Investment Code (*Código Orgánico de la Producción, Comercio e Inversiones*) includes important investment incentives intended to attract foreign investment.

As already mentioned, investors may enter into an investment agreement with the Ecuadorian government. Among other advantages, these agreements provide assurances for both foreign and national investors. These agreements also provide certain incentives and benefits for the investor, including:

- i) Exemption from the currency remittance tax.
- ii) Certainty regarding the legal framework under which the investment is carried out, including the possibility to submit any disputes to arbitration.

The new Organic Law for Economic Development and Fiscal Sustainability, (*Ley para el Desarrollo Económico y Sostenibilidad Fiscal*), that was issued in November 2021, establishes additional incentives for investors:

- Income tax reduction of between 3% and 5% for new investment for up to 15 years if certain conditions are met.
- Currency outflow tax exemption on payments made abroad of i) either capital or dividends in an amount equivalent to the value entered into the country, either as own financing without interest or as equity contribution, as long as they have been used to make productive investments; ii) the sale of shares, participations, fiduciary rights or any other asset acquired by companies or persons without tax residency in Ecuador.

3.8 Exchange control restrictions

There are no exchange control restrictions in Ecuador.

04

BUSINESS ENTITIES

4

BUSINESS ENTITIES

4.1 Common business structures

The main and most common corporate vehicles recognized in Ecuadorian legislation are divided into two groups: (i) On the one hand, companies incorporated under Ecuadorian law. These are stock corporations, limited liability companies, and simplified joint stock corporations. (ii) On the other hand, the legislation allows registration of branches of foreign companies as an extension in Ecuador of the legal existence of companies incorporated abroad.

Companies incorporated according to Ecuadorian law are under regulatory supervision of the Superintendency of Companies (without prejudice to supervision of the tax authority or other sectorial authorities, depending on the economic activity in which the company is engaged). Below is a brief summary of each:

4.1.1 Stock corporations: These are companies incorporated by two or more shareholders through a deed executed before a notary public and registered with the Commercial Registry in the district of their registered office. Their capital stock must amount to at least USD 800, divided into shares. Shareholders of stock corporations may be individuals or legal entities, Ecuadorian or foreigner, and will have limited liability in case of the company's insolvency up to the amount of the capital stock held by them in the company. These companies are governed by the Shareholders Meeting (although they may have other parallel bodies such as a board of directors) and must have at least one legal representative. Any type of economic activity may be carried

out under this corporate vehicle.

4.1.2 Limited liability companies: These are companies incorporated by two or up to fifteen partners through a public deed executed before a notary public and registered with the Commercial Registry of the district of their registered office. Their capital stock must amount to at least USD 400 divided into share participations. The partners may be individuals or legal entities, Ecuadorian or foreign, who may transfer their participations only after all the partners' unanimous approval. The partners will have limited liability for the company's obligations in the event of its insolvency up to the amount of the capital stock owned by them. These companies are governed by the Board of Partners and must have at least one legal representative.

4.1.3 Simplified joint stock companies: These are companies conceived and tailored in order to meet the needs of their incorporators. To have legal existence, they must be incorporated by at least one shareholder through a private document not recorded by a notary but registered with the Superintendency of Companies. There is no minimum capital stock requirement and shares may be of different types. The shareholder(s) may be individuals or legal entities, Ecuadorian or foreigner, who will have limited liability in case of the company's insolvency up to the amount of the capital stock held by them in the company. These companies are governed by the Shareholders

Meeting (although they may have other parallel governing bodies) and must have at least one legal representative.

Regarding branches of foreign companies, these types of companies will be under supervision of the Superintendency of Companies (without prejudice to supervision by the tax authority or other sectorial authorities, depending on the economic activity in which the company is engaged). Registration of a branch in Ecuador is regarded as extension of a foreign company in

Ecuadorian territory by extending the corporate structure of the parent company into Ecuador. The parent company (i) will be jointly and severally liable for the obligations acquired by the branch; (ii) will be in charge of governing the branch and must always keep at least one attorney-in-fact in Ecuadorian territory who will be jointly and severally liable for the branch's obligations; (iii) must allocate an initial capital of at least USD 2,000 for its operations in Ecuador.

4.2 Establishment of a local subsidiary or branch or representative office

Foreign companies may conduct economic activities in Ecuador directly or indirectly. If directly, foreign companies may:

1. Register a branch in Ecuador which will be an extension of the parent company in Ecuadorian territory without creating an entity different from the parent company. Therefore, the branch will be governed by the parent company which will assume the obligations incurred by the branch. The branch will be regulated by the Superintendency of Companies, which will also approve its registration in Ecuador after proving that the parent company has legal existence in its country of incorporation and that its governing legislation and by-laws do not prevent the opening of a branch abroad.
2. Incorporate a subsidiary in Ecuador where

the parent company owns all of its capital stock, may make all decisions, and appoint the subsidiary's directors. The parent company may have a legal structure allowing it to fully control all aspects of the subsidiary.

Indirectly, foreign companies may be present in Ecuador when their operations include services provided from abroad without needing to incorporate or register a legal structure in Ecuador. There are exceptions for certain economic activities requiring that the companies performing them should be domiciled in Ecuador (e.g., for execution of public works or exploitation of natural resources). These types of companies, however, must have at least one attorney-in-fact in Ecuador with sufficient powers to answer claims and fulfill obligations assumed by the company.

4.3 Filing and record-keeping requirements

During their legal existence, companies have regulatory obligations imposed by the Superintendency of Companies regarding periodic reporting of information as well as record-keeping.

Below is a schedule describing the companies' reporting obligations with the Superintendency of Companies:

January	February	March	April
<p>January 31: A shareholding structure report must be filed for each foreign shareholder up to the beneficial owner of local companies (whether individuals, publicly traded entities or investment funds). For the shareholders of a local company, the information must include a certificate of legal existence and a power of attorney issued to an Ecuadorian individual or entity. In addition, the following information is required from each shareholder in the shareholding structure: name, tax identification number, marital status, address, telephone number and e-mail address.*</p>	N/A	<p>March 31: The following information must be filed with respect to the local company</p> <ul style="list-style-type: none"> ■ Minutes of annual and regular shareholders meetings; ■ Directors' and statutory auditors' reports (if applicable); ■ Financial statements; ■ List of directors, legal representatives and partners or shareholders; ■ If applicable, companies that retain external auditors must submit the external auditors' report; ■ Financial statements of the branch, list of attorneys-in-fact, and annex describing the financial movement of goods and services.** 	N/A
May	June	July	August
N/A	N/A	N/A	N/A
September	October	November	December
<p>September 30:</p> <ul style="list-style-type: none"> ■ If applicable, Ecuadorian companies and branches of foreign companies must retain an external audit and notify the Superintendency within thirty days after executing the audit contract. ■ Payment of the first installment of corporate contributions to the Superintendency of Companies. 	N/A	N/A	<p>December 31: Payment of the second installment of corporate contributions to the Superintendency of Companies.</p>

* This obligation applies exclusively to companies with foreign partners or shareholders.

** This obligation applies exclusively to branches of foreign companies.

Regarding the company's record-keeping obligation, it must keep records of corporate books which include: (i) Stub book of shares: Record of the stub book of share certificates delivered to partners or shareholders as proof of ownership; (ii) Book of shares and shareholders recording all movements and transactions of shares or participations; (iii) Book of minutes recording all the minutes of regular or special meetings held by the companies' governing bodies; (iv) Minutes record: A book where all documents examined

or discussed during the meeting and listed in the minutes are included, as well as documents authorizing the presence of individuals at the meeting; (v) Accounting records of the company's economic activities.

Disclaimer: This section exclusively addresses the obligation to deliver information and record-keeping imposed by the Superintendency of Companies, without prejudice to the existence of other tax or regulatory obligations.

4.4 Purchasing a business

It is possible to buy a business by acquiring the target's capital stock. The following are the applicable general rules, although they may vary depending on the by-laws of each target: (i) Transfers of shares in corporations or simplified stock corporations are private processes and it is only necessary to give notice to the Superintendency of Companies which will examine the parties' compliance with formal requirements but may not reject the transaction. (ii) Furthermore, all the partners' consent is required for the transfer in a purchase of equity interests of a limited liability company. The process includes notarial procedures and registration with the Commercial Registry.

Furthermore, acquisitions of targets when the transaction meets the thresholds set forth in the law must be subject to merger control by

the Ecuadorian competition authority. These thresholds are: (i) When the turnover of the intervening parties in the transaction exceeds USD 80,000,000; or (ii) When the market share among the intervening operators in the relevant market exceeds 30%.

In addition, the regulatory authorities of certain industries must authorize changes of control or acquisitions (for example, acquisitions of more than 6% of a bank's capital stock must be authorized by the Superintendency of Banks, and acquisitions in the telecommunications industry require the Telecommunications Regulatory Agency's authorization).

It should be noted that certain acquisitions may be subject to the merger control regime, which is not discussed in this chapter.

4.5 Agency arrangements

A commercial agency is a contract defined and regulated by the Commercial Code as "a contract by virtue of which a businessman, called an agent, assumes in stable and permanent manner the task of promoting, exploiting and/or engaging

in commercial business dealings, which may be specific to a specific territory, in the name and on behalf of another person, national or foreign, called the principal". The agency contract must be formalized in writing and registered with the

Commercial Registry of the district where it is executed.

The agent (i) will receive a remuneration that may be a fixed amount, a variable percentage, or any arrangement agreed upon by the parties;

(ii) unless otherwise agreed, the agent will not assume the risk of the operation carried out (iii) will be personally liable to the principal for his/her actions and those of his/her dependents, (iv) will serve during the term set by the parties.

4.6 Government Participation

In accordance with its legal system, the Ecuadorian State actively participates in economic matters. Such active participation is consolidated as follows: (i) In strategic sectors, (ii) state-owned companies, (iii) mixed economy companies, and (iv) strategic alliances. This section does not address the State's regulatory role or its role as credit or investment allocator.

1. Strategic sectors: Energy in all its forms, telecommunications, non-renewable natural resources, transportation, hydrocarbon refining, biodiversity and genetic heritage, radio spectrum and water are considered strategic sectors. These sectors are administered, regulated, controlled and managed by the State. In addition, the law provides that the State will be responsible for the provision of public drinking water and irrigation services, sanitation, electric power, telecommunication, roads, port and airport infrastructure.

State-owned companies are responsible for the management of strategic sectors. In addition, they may delegate the management of strategic sectors to joint ventures where the State is a majority shareholder; and, exceptionally, it may delegate the management to the private sector.

2. State-owned companies: State-owned companies are enterprises incorporated and regulated by public law enjoying legal status

and financial, economic, administrative and management autonomy. They are intended for management of strategic sectors, provision of public services, sustainable use of natural resources or public goods and, in general, for developing economic activities that correspond to the State. State-owned companies may be incorporated by the President of the Republic or by autonomous decentralized governments at their multiple levels. They may be direct competitors of private enterprises in the industries to which they belong, although their activities must be performed in keeping with what is permitted by the legislation.

3. Mixed economy companies: Mixed economy companies are joint stock companies in which the State, decentralized autonomous governments or public sector entities own capital stock jointly with individuals or with a private enterprise. These companies may perform any economic activity and are governed by private law and supervised by the Superintendency of Companies. Decision-making and profit distribution must be proportional to the capital stock held by each shareholder.

4. Strategic alliances: These are agreements between public entities and a private enterprise for execution of a public work.

4.7 Joint Ventures

A joint venture is a specific type of contract where two or more individuals or legal entities agree to operate a business together for a given period of time without incorporating an entity with legal status separate from that of the parties. To enter into a joint venture, the participants must sign a private written contract establishing, at least, the rules relating to control (with the possibility of including decision-making bodies), management, representation, form of contribution in the joint business, how much responsibility the participants

will have for the obligations assumed, duration, subject matter and purpose of the joint venture. Joint ventures must have at least one common manager and attorney-in-fact who may bind all the participants of the joint venture. Joint ventures terminate once the purpose for which they were created has been achieved, or by the participants' decision. If there are outstanding obligations at the end of the joint venture, the participants are jointly and severally liable.

4.8 Limited Liability Companies

The partners or shareholders of stock corporations, limited liability companies and simplified stock corporations have limited liability up to the

amount of the capital stock held by them in the company if the latter is unable to comply with its obligations.

4.9 Unlimited Liability Companies

There are two types of companies in which the partners are jointly, severally and unlimitedly liable for the companies' obligations, although it is important to note that these corporate vehicles are rarely used: (i) *sociedad en comandita simple* (limited partnership) in relation to its general partners; and (ii) *sociedad en nombre colectivo* (general partnership) also in relation to its general partners.

It must be noted that if the formalities for

registration are not observed in the case of stock corporations, limited liability companies and simplified stock corporations, the shareholders or partners will be unlimitedly, jointly and severally liable for the obligations acquired. It ought to be taken into account that in simplified stock corporations the shareholders may expressly waive the limited liability they enjoy and will be jointly, severally and unlimitedly liable for the obligations assumed by the company.

4.10 Partnerships, General or Limited

Partnerships -which are considered associations of individuals with a common objective- must always provide that their members are jointly and unlimitedly liable for the obligations assumed in the partnership (when an entity, if by its nature

limits the liability of its members up to the amount of their capital, is not incorporated). There are no partnerships where the partners, without incorporating an entity that limits the liability of its members, have limited liability.

4.11 Trusts and other Fiduciary Entities

As a general rule, any individual or entity may place trust property with a trust enjoying legal personality and capitalized with goods or future profits where a trustee administers the trust, complies with the instructions for which it was created and will deliver the product or the goods with which the trust is capitalized to the beneficiary of the trust.

Furthermore, trustees may also perform fiduciary assignments entrusted to them, which are instructions given by the incorporator to the trustee to be executed in relation to any rights held by the incorporator but without transferring to the trustee the ownership of rights subject to the instructions.

4.12 Sole proprietorships

According to Ecuadorian law, there are no companies that, by nature, are sole proprietorships.

Regarding commercial companies, the law provides that all companies, with the exception of simplified stock corporations, must have at least two partners or shareholders owning the capital stock.

Furthermore, simplified stock corporations allow a single shareholder, whether an individual or a legal entity, to be the sole owner of the company's entire capital stock. No distinctions are made in the regulatory treatment of simplified stock corporations whose capital is owned by one or several shareholders.

4.13 Non-profit organizations/charities

Non-profit organizations are regulated by Ecuadorian law. They may be incorporated under three legal forms or, in the case of foreign non-profit organizations, they may be homologated in Ecuador. Public authorities (line ministries for the sector in which the altruistic activity is intended to be provided) will approve the existence of Ecuadorian NPOs and provide these entities with legal personality. For foreign NPOs, the Ministry of Foreign Affairs is responsible for authorizing their operation in Ecuadorian territory.

Ecuadorian NPOs can be created according to any of the following forms:

1. Corporations: They are corporate entities of associative nature, stable and organized,

comprising at least five members. Their purpose must be the promotion and pursuit of the common good of its members, the public good in general or that of a particular group.

2. Foundations: Entities created by the will of one or more founders to promote the common good in social, cultural, educational, environmental, sports, philanthropic and charitable areas.

1. Other: Other types of social organizations are those governed by their own laws such as communes, water boards, irrigation boards, agricultural centers, etc. Each of them has its own specific treatment.



05

CAPITAL MARKETS

5

CAPITAL MARKETS

The Ecuadorian securities market is a highly regulated and supervised market which allows for free movement of capital and free participation of investors.

Securities brokerage and administration and representation of funds in Ecuador are activities that must be performed through entities that belong to the Ecuadorian Securities Market.

The following regulations apply to the securities

markets in Ecuador:

- (i) The Stock Market Law, Second Book of the Monetary and Financial Code;
- (ii) General Regulations to the Stock Market Law;
- (iii) Resolutions issued by the regulator known as *Junta Política de Regulación Financiera*.

The securities market and its participants are controlled by the Superintendency of Companies.

5.1 Definition of Securities

Regarding the definition of securities, the Stock Market Law defines securities (*valores*) as the right or set of rights of mainly economic content, tradable in the stock market, including, among others, shares, debentures, bonds, shares in collective investment funds, forward or futures contracts, swaps, call or put options, securities

with credit participation or mixed content deriving from securitization processes, and others determined by the National Securities Council. (It should be noted that the National Securities Council was replaced in 2014 by the *Junta Política de Regulación Financiera*).

5.2 Entities that participate in the Ecuadorian securities market

The Stock Market Law recognizes the following entities as agents in the Ecuadorian Securities Market:

- Brokerage companies (*casas de valores*) are the only entities authorized in Ecuador to intermediate in trading with securities. A brokerage company can only perform intermediation with securities. For this purpose, it can assist in investments in stock market products, underwrite security issuances, manage individual investment portfolios and invest them in Ecuadorian securities market products. Additionally, if

the brokerage company is authorized by the Superintendency of Companies to operate as an investment bank, it can also promote financing sources such as onshore or offshore financing, syndicated loans, M&A and equity offerings.

According to stock market regulations, by acting as intermediaries on their clients' behalf, brokerage companies can also contact foreign brokerage companies and buy foreign securities from them, allowing their clients to acquire foreign securities that are traded and duly listed in foreign stock markets. For this

purpose, they can execute the corresponding agreements. Local brokerage companies are permitted to receive and instruct negotiation orders related to foreign securities as long as they are traded and duly listed in foreign stock markets. Therefore, local brokerage companies can help local clients contact foreign brokerage companies for the acquisition of stock.

- Funds and trust administration companies (*administradoras de fondos y fideicomisos*) are the only entities authorized in Ecuador to issue, promote and manage investment funds. Fund administrators are only allowed to administer funds and to represent foreign funds after having executed the corresponding agreement,

subject to information requirements established by secondary regulations.

- Stock exchanges (*bolsas de valores*) are places where securities and some types of funds can be traded.
- Clearing houses (*depósitos centralizados de valores*) are places that provide clearing and settlement services for transactions, securities and prices paid. Additionally, clearing houses have the responsibility to keep the records of shares and shareholders of companies that list their shares in the market.

5.3 Public Offerings and Private Placements

5.3.1 Public Offerings

It is worth noting that no private placements exist in Ecuador. Therefore, an offer may be considered public (even if there is no public advertising) if the offer is made to the public or to certain sectors of the public.

According to Ecuadorian law, all public offerings must be made through authorized entities as set forth in the relevant regulations.

A public offering must meet the following requirements:

1. A risk rating report, except for the offering of shares, unless the regulator entity has provided otherwise, or offerings by the Central Bank of Ecuador or the Ministry of Economy and Finance.
2. Registration with the Stock Market Registry (*catastro de mercado de valores*).

3. Distribution of an offering memorandum previously approved by the Superintendency of Companies.

It must be noted that the following will not be considered a public offering:

- The offering of shares or convertible corporate bonds to current shareholders of the issuer.
- Transfer of securities as a contribution to a trust agreement, donation of securities, and contribution of securities for the incorporation of a company or for a capital increase of a company.
- Adjudication of securities due to liquidation, merger or split up.

5.3.2 Public Offering of Securities by Foreign Issuers in Ecuador

Regarding foreign securities, only local institutions in the securities market can offer and trade them

after registration of those foreign products and a public offering process. For this purpose, foreign securities must be registered and traded in a foreign stock market.

The same applies to foreign funds. They can only be offered and traded by local institutions in the securities market after registration of those foreign products and a public offering process. For this purpose, the foreign fund must be a regulated fund and must be traded in a foreign stock market.

5.3.3 Issuance and Negotiation

Primary market and secondary market transactions involving securities that are purchased directly from the issuer are conducted in the so-called primary market. The issuance of listed securities and securitized securities may take place through the stock market or through brokerage companies and settled in clearing houses.

Previously issued securities are purchased from other investors in the secondary market rather than purchased directly from the issuer.

5.4 Obligation to Disclose Material Information to the Market

Issuers are required to timely disclose any information in relation to themselves or to an issuance that may affect them, the value of their securities or their capacity to comply. The Superintendency may request any other material information from issuers to ensure and preserve the behavior of capital.

06

TAXATION

6

TAXATION

6.1 Overview

The Ecuadorian tax regime is divided into national, provincial, municipal and exceptional jurisdictions, with the Internal Revenue Service ('SRI' for its Spanish acronym) as head entity that manages and collects national taxes.

The taxes that yield most profits for the State are the value added tax and income tax.

It is important to note that many of the campaign

promises made by the current President of Ecuador, Guillermo Lasso (sworn into office on May 24, 2021) revolve around amendments to the Ecuadorian tax regime. This means that the content of this section is subject to change. Nonetheless, modifications to the tax regime require approval by the National Assembly of Ecuador.

6.2 Income tax rates/bands and personal income tax

The income tax base encompasses all income earned during the fiscal year which starts January 1 and ends December 31, less costs and expenses incurred for the purpose of obtaining, maintaining and improving the taxable income. Companies and individuals whether or not domiciled in Ecuador that receive income from an Ecuadorian source must pay income tax.

The generally applicable corporate income tax rate in Ecuador is 25%. However, 28% rate may apply if the company has a shareholder that resides in a country that the Ecuadorian Tax Authority considers a tax haven, a lower-tax jurisdiction or a preferential tax regime and, concurrently, if the ultimate beneficial owner is an Ecuadorian

resident; or if the Ecuadorian company fails to report all levels of ownership of its shares – i.e. corporate structure up to the ultimate level identifying individuals who are ultimate beneficial owners.

As mentioned, according to the Organic Law for Economic Development and Fiscal Sustainability, for new investors, there could be a reduction of up to 5 points and for up to 15 years.

For individuals, the income tax rate in Ecuador can go up to 37%. The following table will be applied for the income tax payment for the income received by individuals corresponding to fiscal year 2022:

INCOME TAX 2022			
Basic Allowance	Excess up to	Tax on Basic Allowance	% Tax on Excess Allowance
\$0.00	\$11,310.00	\$0.00	0.00%
\$11,310.01	\$14,410.00	\$0.00	5.00%
\$14,410.01	\$18,010.00	\$155.00	10.00%

\$18,010.01	\$21,630.00	\$515.00	12.00%
\$21,630.01	\$31,630.00	\$949.40	15.00%
\$31,630.01	\$41,630.00	\$2,449.40	20.00%
\$41,630.01	\$51,630.00	\$4,449.40	25.00%
\$51,630.01	\$61,630.00	\$6,949.40	30.00%
\$61,630.01	\$100,000.00	\$9,949.40	35.00%
\$100,000.01	And above	\$23,378.90	37.00%

The Organic Law for Economic Development and Fiscal Sustainability has also established a special

regime for entrepreneurs for up to 3 years with lower income tax.

6.3 Tax residence

For tax purposes, a resident is someone who stays in Ecuador during 183 calendar days or more, whether consecutive or not, in the same fiscal year, or for 12 months within two fiscal years. Sporadic absences, i.e., absences not exceeding 8 consecutive days, are included.

An individual is also deemed to have tax residence in Ecuador when its core economic activities or interests are directly or indirectly in Ecuador.

An individual could be deemed to have tax residence in Ecuador if the person has over USD 1,000,000 in assets in Ecuador and previously

has had permanent residency in Ecuador or has previously been a legal representative of Ecuadorian companies.

In general, the corporate tax residence is determined by the place where they were established according to their by-laws or where they carry out their economic activities. However, there are exceptional cases in which the Internal Revenue Service can accept an exceptional tax residence where tax collection will become more efficient. For tax purposes, tax residence is the same as domicile.

6.4 Corporate taxation

Corporate taxation is part of the income tax regime in Ecuador. However, companies in Ecuador must also contribute to the Superintendency of Companies. Their contribution is calculated on the value of the real assets owned by a company in Ecuador. The rate of this annual contribution is one per one thousand of the real assets value.

Additionally, Ecuadorian companies must obtain a municipal business permit in the specific municipality where they will perform activities on a permanent basis, and must pay an annual business tax based on their equity. The business permit tax rate varies, but in no case may it exceed USD 25,000.

6.5 Branch taxation

As it has been mentioned, it is possible to establish an Ecuadorian branch of a foreign company once all the requirements have been met. Companies that are incorporated abroad may establish a branch in Ecuador by means of a process known as

domiciliation. However, local branches are subject to the same tax regime as local corporations, with the same obligations. The parent company will be held liable for the tax obligations of its branch.

6.6 Withholding taxes

In their capacity as withholding agents, Ecuadorian companies and branches of foreign companies with domicile in Ecuador must withhold income tax at source on all payments made, provided these are taxable income for the recipient (as a rule, all Ecuadorian-sourced income paid to residents or non-residents is considered taxable

income for the recipient). The withholding rate depends on the goods or services acquired, but cannot be greater than 10% on local payments nor greater than 37% on payments made abroad (25% being the generally applicable rate for payments made abroad, and 37% if the beneficiary resides in a tax haven).

6.7 Inter-company dividends

Dividends distributed by companies domiciled in Ecuador to foreign shareholders are considered taxable income. Generally, 25% withholding tax applies on 40% of the total distributed income. The withholding tax rate may be reduced in accordance with double taxation treaties. The withholding rate is increased to 37% if the company that distributes the dividend fails to report all levels of ownership of its shares – corporate structure up to

its ultimate beneficial owners.

Furthermore, non-commercial loans granted by companies to their related parties are deemed advance dividend payments subject to 25% income tax, irrespective of the domicile of the beneficiary of the advance dividend.

Dividends paid between local companies are exempt from income tax.

6.8 Thin Capitalization

The total amount of net interest in operations carried out with related parties must not be greater than twenty percent (20%) of the profit before labor participation, plus interest, depreciation and amortization corresponding to the respective fiscal year.

The SRI relies on the substance over form principle and all thin capitalization rules apply.

6.9 Transfer pricing

The Ecuadorian transfer pricing regime regulates transactions carried out between related parties for tax purposes, based on the arm's length principle. This regime aims to put transactions between related parties on an equal footing with transactions between independent parties. To apply the transfer pricing regime, operations must be comparable. This means that there should be no differences in the relevant economic traits of the transaction that would affect the profit margin.

Furthermore, sums remitted abroad as payment for operations with related parties must be

within the range established in transfer pricing regulations to avoid taxation drawbacks. Taxpayers that undertake transactions with related parties will be released from the application of transfer pricing regulations when three conditions are met:

- The income tax incurred exceeds three (3%) percent of their taxable income;
- They undertake no transactions with residents in tax havens or low-tax jurisdictions; and
- They have not entered into contracts for exploration and exploitation of non-renewable resources with the State.

6.10 Double Taxation Agreements

Ecuador has signed double taxation agreements with Japan, Russia, Qatar, Belarus, South Korea, China, Singapore, Canada, Mexico, Brazil, Uruguay, Chile, the Andean Community (whose members are Colombia, Peru, Bolivia and Ecuador),

Spain, Germany, Switzerland, Romania, France, Italy, Belgium, Argentina (only applicable to air transport), and the United Arab Emirates (the latter starting January 1, 2022).

6.11 Capital Gains Tax

The capital gains tax is triggered by the profit generated from a transfer of shares (on any basis), whether the transfer is direct (e.g., holder of shares in an Ecuadorian company) or indirect (e.g., holder of shares in a foreign company which, in turn, holds shares in an Ecuadorian company).

Indirect transfer of shares or other equity interests in Ecuadorian companies is taxed as long as the following occurs concurrently:

- At any time within the fiscal year in which the transfer occurs, the actual value of the shares or other equity interests in a permanent establishment or company resident in Ecuador directly or indirectly represents 20% or more of the actual value of all shares or other equity interests in a company not resident in Ecuador.
- Within the same fiscal year or during twelve months prior to the transaction, the transfer(s) of shares or other equity interests of the non-resident company whose transferor is the same individual or company or its related parties corresponds directly or

indirectly to an aggregate amount exceeding 300 income tax-free basic allowances for individuals. This amount will be increased to 1,000 income tax-free basic allowances for individuals when the transaction does not exceed 10% of the total share capital.

Moreover, an indirect transfer of shares or other equity interests is understood to have occurred, even if the two conditions above are not met, if at the time of the transfer: (i) the non-resident company whose shares or equity interests are being directly transferred is a resident or is established in a tax haven or lower tax jurisdiction, or its tax residence is unknown; and (ii) more than 50% of the direct holders of its shares or other equity interests are also residents or established in tax havens or lower tax jurisdictions, or their tax residence is unknown. In that case, a transfer of any percentage and any amount of such shares or other equity interests will suffice in order for an indirect transfer to be deemed to have occurred in the portion corresponding to the direct and indirect interest in a permanent establishment or company resident in Ecuador.

It is important to note that this tax does not apply

to company reorganizations, transformations, mergers and spin-offs.

The taxable income for the capital gains tax is the actual value of the transfer, minus the proportional equity value (PEV) of the shares as of December 31 of the previous year (without considering any retained earnings), and of the expenses directly connected to the transfer. The applicable rate is 10%

The tax must be paid by the owner of the transferred shares. To preclude the possibility of non-payment of the tax by owners residing abroad, Ecuadorian law establishes that the company whose shares are being transferred — directly or indirectly — will act as a substitute and will be jointly liable for payment of the tax and compliance with formal duties.

Among the formal duties that a taxpayer must comply with in relation to this tax, the most important is the obligation of the company whose shares are being transferred to report these transfers to the Internal Revenue Service. If they are not reported or are erroneously reported, the company will be fined with 5% of the value of the transaction.

6.12 Land Tax

The municipal property tax is collected by the municipalities throughout the country. The municipalities determine the tax rate depending on whether a property is urban or rural. For urban properties, the rates range from 0.25%*1000 to 5%*1000; for rural properties, the rates vary between 0.25%*1000 and 3%*1000 according to each jurisdiction.

The municipal property tax applies to buildings and land according to annual official appraisals, which reflect the commercial and cadastral value of the property. If the owner has more than one property in a municipality, the tax base will be the sum of the official appraisals.

6.13 Stamp Duty

Under the Ecuadorian tax regime there is no tax comparable to the stamp duty existing in other countries.

6.14 Estate and Gift Taxes

Under the Ecuadorian tax regime, estate and gift taxes are triggered by an increase in wealth obtained for free where: (i) the assets or rights are located in Ecuador for nonresident recipients, or (ii) the beneficiary is an Ecuadorian resident, irrespective of the location of the rights or assets. This means that factors such as nationality, place of residence, place of death and the contract itself are not contemplated as exceptions for this tax.

Moreover, the acceptance by the party obtaining the increase in wealth may even be tacit and still trigger the tax.

Children and surviving spouses will be exempt from the estate tax.

6.15 Tax on Goods and Services / Value Added Tax

The Value Added Tax (VAT) applies to transfer of ownership or importation of movable property that is corporeal in nature, or of intellectual property rights and services (services performed by foreigners without a tax residence in Ecuador for individuals or legal entities with residence in Ecuador). The current VAT rate is 12%.

VAT paid on local purchases and imports

constitutes a tax credit that can be offset against VAT imposed on local sales of goods and services subject to the tax. No tax credit is applicable on imports or purchases of goods and services subject to 12% VAT if the taxpayer (who purchases the goods or services) exclusively transfers goods or services subject to 0% VAT. In this case, VAT paid on purchases is considered a cost or expense.

6.16 Sales Tax

In Ecuador, a sales tax known as *alcabala* in Spanish falls under the jurisdiction of municipalities. It applies to the transfer of ownership of real estate. The rate is 1% of the contract value; if the value is lower than the cadastral value, then the latter will be considered.

Once the tax is paid, no refund will apply if the contract is found void, amended, rescinded or terminated. The only exception to this rule applies when the contract is found void for reasons that could not have been reasonably foreseen by the parties.

6.17 Other taxes (e.g., fringe benefit tax, worker compensation levies, customs, and excise)

6.17.1 Tax on Overseas Transfer of Currency (ISD for its Spanish acronym)

The tax-generating event for ISD is the transfer or movement of funds abroad in cash or through checks, transfers, deliveries, withdrawals or payments of any kind made with or without intermediation of financial system institutions. The tax-generating event for ISD comprises other mechanisms for the discharge of obligations when operations are made abroad, except for offsetting. The rate for this tax is 4%.

The transferor of money abroad is legally responsible for paying this tax (ISD is not subject to withholding at source). ISD is generated not only when money is actually sent abroad, but also in cases where the law presumes that money is remitted abroad, as follows:

- When an Ecuadorian company makes payments abroad from funds it keeps abroad or through third parties; and,
- When the proceeds of exports undertaken by Ecuadorian residents do not enter Ecuador.

In the case of payments for imports of raw materials, inputs and capital goods which are incorporated into the production process, the ISD generated on such payments may be used as tax credit for payment of income tax in the current fiscal year and the subsequent four fiscal years. The ISD that is susceptible of being considered a tax credit but has not been used as such (in cases where the income tax incurred is less than the tax credit) may be refunded by the tax authority.

The following overseas remittances, among

others, are exempt from ISD: (i) cash carried by individuals leaving Ecuador up to USD 1,260; (ii) dividends remitted abroad (calculated after the Ecuadorian company has paid the corresponding income tax), provided that the beneficiary is not an Ecuadorian resident; (iii) either capital or dividends in an amount equivalent to the value entered into the country, either as own financing without interest or as equity contribution, as long as they have been used to make productive investments; (iv) the sale of shares, participations, fiduciary rights or any other asset acquired by companies or persons without tax residency in Ecuador.

6.17.2 “1.5 per one thousand” tax on total assets

Ecuadorian companies must settle and pay a 1.5 per one thousand tax on total assets and pay such tax to each of the municipalities where they conduct their economic activities.

Taxpayers that conduct activities in more than one municipality must pay this tax in each such municipality, taking into account, for distribution purposes, the income obtained in each one of them.

To determine the tax base for this tax, taxpayers may deduct obligations having a term of up to one year as well as contingent liabilities.

6.17.3 Profit sharing

Fifteen percent of the employer’s profits must be distributed among all its employees (and former employees who worked during the fiscal year) in

proportion to the length of service and the number of family dependents. The amount is distributed as follows: (i) 10% directly to the employees, regardless of the remuneration received; (ii) 5% to

the employees in proportion to their dependents including spouses and children under 18 years of age and disabled children of any age.



07

TRADE REGULATION

7

TRADE REGULATION

7.1 Overview

Trade is regulated mainly by the Code of Commerce as well as other laws such as the Civil Code. Because of the origin of trade, custom is also accepted as a legitimate source of law when there is no specific rule regarding the subject at hand.

A new Code of Commerce came into force on May 29, 2019. The new Code includes regulations that aim to enhance contractual freedom and adjust to novel mediums used by merchants, specifically digital platforms.

Persons are subject to this law when they are defined as traders/merchants or their activity is commercial in nature. The Code states that commercial activities are acts or operations that necessarily imply the continuous exchange of goods or services carried out in a specific market for an economic benefit.

Companies performing economic activities, including branches of foreign entities, are subject to the Law on Companies which regulates their incorporation, corporate governance and other legal obligations. Article 6 of the Law on Companies establishes that every domestic or foreign company that contracts obligations in Ecuador must appoint an attorney-in-fact who is a resident in Ecuador as its legal representative in this country. If this requirement is not met, companies are not capable of acquiring contractual obligations in Ecuador.

Furthermore, according to Ecuadorian trade regulations, companies must fulfill the following duties listed in the Code of Commerce:

- Keep records or an income and expense

account and correspondence reflecting the company's commercial activities.

- Obtain a Taxpayer Registration Number (RUC for its Spanish acronym). Not registering does not detract from the commercial nature of the acts carried out by a merchant if they meet the requirements contained in the Code of Commerce and promptly report any changes.
- Register relevant company information in the Commercial Registry.
- Obtain the necessary permits for performing their activities.
- Refrain from engaging in conducts that can be considered abusive or unfair to market competition and, in general, from committing any infraction sanctioned under the Competition Law.
- Refrain from incurring in practices sanctioned under the Consumer Protection Law.

The State supports free trade in Ecuador. However, the State reserves its right to manage, regulate and control strategic sectors according to the principles of environmental sustainability, precaution, prevention, and efficiency. The following are strategic sectors:

- Telecommunications
- Non-renewable natural resources
- Transportation
- Refining of hydrocarbons
- Biodiversity and genetic heritage
- Radioelectric spectrum
- Water
- Other sectors as determined by the law

7.2 Antitrust laws

The Ecuadorian antitrust regime is regulated by the Competition Law. The Market Power Regulation Board is the authority in charge of issuing regulations regarding the Ecuadorian antitrust regime. Additionally, the Competition Agency (SCPM for its Spanish acronym) is in charge of enforcing the application of the law.

The law defines an undertaking as a public or private entity of national or foreign origin with for-profit or non-profit intent that can currently or potentially carry out economic activities within an Ecuadorian jurisdiction. The objective is to prevent, identify, and sanction circumstances of market dominance, meaning that an undertaking has the capacity to act independently from its competitors, consumers, and suppliers, charging supra competitive prices profitably.

A dominant undertaking can act unilaterally to the detriment of consumers and create barriers that restrict the entry of other firms into the market by abusing their dominant position. According to Competition Law, to define if an undertaking is dominant the relevant market must be delimited in terms of the product characteristics, the geographical area where it exerts influence and other time-related factors.

The Competition Law also includes regulations regarding unfair competition behaviors, defined as any act in the performance of economic activities that is contrary to honest practices or customs, with or without intent. The law includes a list of specific practices that can be considered unfair such as misleading, deceptive, imitation, and denigration actions, among others. However, unfair competition is not limited to a specific form. Local law establishes a general clause that focuses on the effects, punishing any action that prevents, restricts, falsifies or distorts competition, threatens economic efficiency or the general welfare or

rights of consumers.

It is important to note that even if an undertaking engages in a behavior deemed unfair by competitors, it is the average consumer who would be deceived or misled by the acts. Although unfair competition behaviors are described in the antitrust regime, it also intersects with civil law and intellectual property law, which means that there are various avenues for legal action. In the case of the antitrust regime, the Competition Agency may sanction such acts by analyzing the harm that the practice inflicted on the public interests.

In addition, since October 2011 Ecuador has had, for the first time, a control system for mergers and acquisitions. This system was established after the enactment of the Competition Law and is characterized by its prior and mandatory nature and potential penalties if the transaction is not reported.

The trigger for the system is the takeover of a concentration transaction. The Law defines an economic concentration as the takeover of one or more companies or economic operators through acts or contracts such as: (i) merger; (ii) transfer of a merchant's assets (understood as sale of assets and/or liabilities); (iii) direct or indirect acquisition of shares, equity interests or documents or titles which grant substantial influence or control over the operator's activities; (iv) common management or, in general, (v) documents or contracts that transfer assets or that grant significant control or influence over an undertaking. As the law is based on the principle of primacy of reality, it makes no difference if the documents or contracts are carried out in Ecuador if they are effective in this country.

It must also be noted that the definition of economic concentration in the law is broad

and based on examples, and that the notion of a takeover appears to be based on the existence, by almost any means, of a variation in capital, assets or provisions resulting from the determining influence in decision-making, that is, a variation in the way a company operates that has consequences for competition in Ecuador.

Considering the above, prior notification must be given in Ecuador: A transaction cannot be closed or finalized without the authorization from the Competition Agency. There are two conditions for the obligatory notice: (i) that the total volume of business of the parties in Ecuador exceeds (in the prior fiscal year) the figure set by the Regulation Board (an inter-ministry entity) which is currently USD 80,000,000 approximately (except for bank or insurance transactions); or (ii) for operators engaging in the same activity, an acquisition or increase equivalent to a share of 30% or more of the relevant market subject to the transaction. The Law grants eight calendar days counted from completion of the agreement to issue the notice. As Ecuador has a prior control system, the term

completion must be understood as reaching a merger or acquisition agreement but not closing it. It is common to submit executed share transfer, merger, or asset purchase agreements to the Agency, but on the condition that the transaction be approved.

It is also important to know that late notice of a transaction is a minor violation of the law, which may result in a fine of up to 8% of the volume of business of the offender. The performance or closing of a transaction before notice or before authorization is given is a serious offense penalized with a fine of up to 10% of the volume of business of the offender. Furthermore, the performance of documents or contracts derived from the transaction before notice or authorization is given is a very serious offense that may result in a fine of up to 12% of the volume of business of the offender. The Agency may order divestment, split-up, spin-off, corrective measures or transfer of control when there are harmful effects on competition.

7.3 Consumer protection laws

The consumer protection regime is codified by the Consumer Protection Law which governs the relationships between consumers and suppliers. It defines a consumer as a person or legal entity that, through a non-gratuitous act, acquires goods or services as an end user, while suppliers are defined as persons or legal entities, either public or private, that manufacture, assemble, distribute, produce, or commercialize goods or services in exchange for monetary compensation.

Moreover, the Consumer Protection Law establishes the duties suppliers must fulfill. It states that they must provide consumers with true, clear, complete, and sufficient information

on the goods or services they are offering so that consumers can make the most appropriate and reasonable decision.

Therefore, the Law sets out the public information that suppliers must include for the consumer to verify the final price of a good or service. The characteristics of the product (including dimensions), price (unit price if the nature of the product allows it), taxes and other expenses that make up the final price are considered public information.

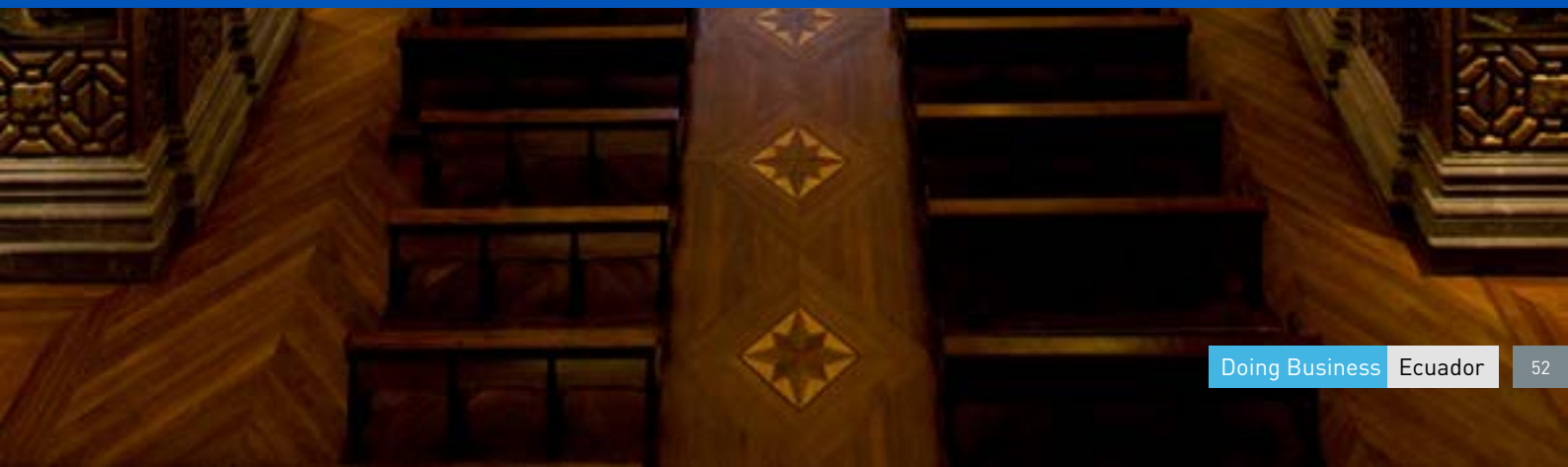
Additionally, products that are meant to be long-lasting like vehicles and electronics must be guaranteed by the supplier to cover for

manufacturing and operating deficiencies. However, when using labels to indicate that a product has a guarantee, suppliers must clearly disclose what it entails and the conditions and procedure for the consumer to make a claim.

Suppliers that do not comply with the duties stated in the consumer protection regime can be found liable. Nevertheless, other suppliers in the value chain who have placed their trademark on the good or service can also be found liable.



INTERNATIONAL TRADE



8

INTERNATIONAL TRADE

8.1 Restrictions on imports and exports

In terms of import and export restrictions, it is important to note that Ecuador does not have trade restrictions that levy specific jurisdictions. Rather, the restrictions imposed are based on the characteristics of products and their impact on the domestic market.

The authority in charge of enforcing import and export restrictions under the Ecuadorian regime is the Ecuadorian Customs Service (SENAE for its Spanish acronym). One of SENAE's functions is to manage and regulate all incoming and outgoing goods and establish the duties that apply. However, the entity in charge of trade restrictions is the Foreign Exchange Committee (COMEX for its Spanish acronym).

In terms of imports, a variety of non-tariff-based restrictions are in place. For instance, certain industries have quotas limiting the quantity of items that can be imported.

Also, prior to importing products such as dairy, suppliers need to obtain a permit given by the Ministry of Agriculture (non-automatic import license). Likewise, the customs destination document is a prior control document issued by Agrocalidad that demonstrates that imported products such as animals, vegetables, or their by-products meet customs clearance requirements. For this process, the phytosanitary registration from the country of origin is required.

Similarly, there are many labeling requirements (refer to section **b** of International Trade) that

are technical barriers for potential suppliers. In addition, importers must pay the tax on overseas transfer of currency when paying fees abroad. These non-tariff-based restrictions demonstrate clear preference for locally produced goods.

Depending on the tariff headings of certain goods, prior to their import they must have a Certificate of Conformity, which is verified by the Ecuadorian Standardization Service (SAE for its Spanish acronym) and confirms that the products comply with technical regulations in Ecuador to protect future buyers and consumers of the products. The products are subject to quality control and verification of compliance with technical provisions, practice codes, regulations, agreements, instruction booklets and official resolutions. The Certificate of Conformity allows the goods to enter Ecuadorian territory.

Additionally, the Sanitary Regulation and Control Agency (ARCSA for its Spanish acronym) regulates the entry and consumption of (imported) processed food products, beverages, food additives, and pesticides. The Health Law requires importers to obtain a sanitary notification permit prior to the import, trade, production, storage, or transportation of these products. The sanitary notification of the product will be valid for five years from the date of issuance and may be renewed for equal periods. This law also prohibits the import of foodstuffs derived from genetically modified organisms without prior authorization.

At the same time, to be allowed to export goods

from Ecuador, exporters must meet the following obligations:

- Apply for a Taxpayer Registration Number (RUC for its Spanish acronym).
- Get an electronic signature certificate.
- Register as exporters in the Ecuadorian customs digital service, Ecuapass.
- Record, through Ecuapass, a customs export declaration (DAE for its Spanish acronym).

However, to export products such as minerals, food, and raw wood, a prior authorization must be obtained from the competent authority.

- Wait for the customs declaration to be approved and keep in storage all goods that will be exported. SENA will inspect the stored products and grant an export permit after the inspection.

8.2 Product labeling requirements

The Ecuadorian Regime has a variety of product labeling requirements. For instance, the information displayed on the labels (containers, packages, or other packets) of the goods offered, as well as the advertising of services, must be in Spanish. However, the supplier may choose to include the same information in another language.

Products meant for human consumption must comply with the regulations of the Ecuadorian Standardization Institute (INEN for its Spanish acronym). Labels must be approved by ARCSA. Even though there are a variety of specifications depending on the goods offered, such as alcoholic beverages, the general requirements for labels are as follows:

- Name of the product
- Trademark
- Lot identification
- Company name
- Net content
- Sanitary registration number
- Nutritional value
- Expiration date or maximum consumption time
- List of ingredients, with their respective specifications
- Retail price
- Country of origin

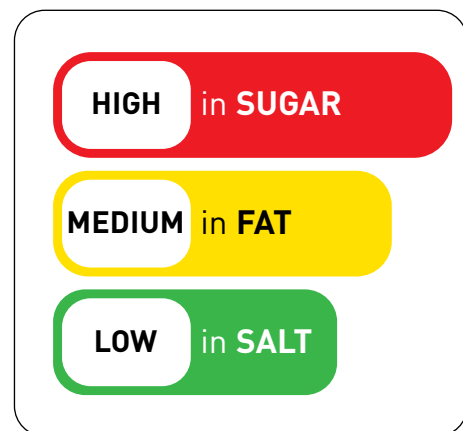
- Indication if it is artificial, irradiated, or transgenic.

While medicines and processed natural products are also part of the products that are meant for human consumption, the general labeling requirements differ considerably and are as follows:

- Name of the product, generic or brand
- Trademark
- Lot identification
- Company name
- Net content
- Sanitary registration number
- Expiration date or maximum shelf life
- List of components, with their respective specifications
- Retail price
- Country of origin
- Contraindications
- Natural products must also identify the origin of the components used and if there are cultural or ethnic elements involved.

Ecuadorian labeling regulations establish four levels of concentration for salt, sugar and fat content: low, medium, high, and none. In 2014, the Ecuadorian government introduced regulations requiring processed food packages to

include traffic light labels against a white or gray background. For each nutrient, a green color and the word Low are used if the concentration is considered low. Similarly, a yellow color and the word Medium and a red color and the word High are used for medium and high concentrations of the nutrients, respectively. If the food product does not contain a nutrient, no color is used but the word “none” is written before the name of the nutrient that is not present.



8.3 Anti-dumping laws

Ecuador has been a member of the World Trade Organization (WTO) since 1995. Antidumping laws are in line with WTO guidelines.

The Foreign Exchange Committee (COMEX for its acronym in Spanish) is the national authority in charge of regulating, investigating, and determining what trade remedies apply in terms of dumping.

A product is considered an object of dumping when the export price is lower than the normal market value for similar or identical products within the domestic market of origin. However, the margin for dumping is deemed *de minimis* when it is less than 2% of the export price. This means that antidumping regulations consider the effect that such practices have on specific domestic industries.

To determine the normal market value, the prices actually paid or that are payable for a similar imported product when it is sold during regular commercial operations within the domestic market of the exporting country must be considered. This means that there are exceptional situations that are not deemed as dumping even when they fit the definition. Overall, antidumping laws consider

the possibility of certain situations taking place, like:

- The circumstances in which prices are formed within the domestic market, in particular those related to basic inputs, do not occur under market conditions or are determined or significantly influenced by government intervention.
- Prices are artificially low.
- When there is a significant participation of barter trade or when there are other regimes of non-commercial transformation.

Furthermore, the following would be considered damaging effects:

- Material damage to the domestic industry.
- The threat of material damage to the domestic industry.
- Significant delay in the formation of the domestic industry.

The COMEX can start an inquiry to investigate a supposedly dumped product and establish a causal relation to the harm it caused to a domestic industry. COMEX has a three-year deadline to

investigate and determine the existence of injury to a domestic industry, but only a twelve-month deadline to investigate if dumping took place. The causal relationship must be proven through evidence and an objective examination that entails:

- The volume of dumped imports.
- The effects of the dumped imports on the prices of similar products in the domestic market.
- The impact of these dumped imports on the domestic industry.

8.4 Cross-border trade treaties

Ecuador is a party to the following main cross-border trade treaties:

1. Multilateral trade agreements

- Ecuador has been a member of the World Trade Organization since 1996. As such, it has executed and ratified all the treaties and decisions issued by the WTO.
- Member of the Latin American Integration Association (ALADI for its Spanish acronym) since 1980.

2. Customs unions

- Member of the Andean Community (CAN for its Spanish acronym) since 1969.

3. Free trade agreements

- Party to a Free Trade Agreement with the European Free Trade Association, in force since 2020.

- Agreement with the European Union, in force since 2017.

4. Preferential trade agreements

- Bilateral agreement with Mexico, in force since 1987.
- Bilateral agreement with Cuba, in force since 2000.
- Economic Complementation Agreement (MERCOSUR, Colombia, Venezuela and Ecuador), signed in 2004.
- Bilateral agreement with Chile, in force since 2010.
- Bilateral agreement with Guatemala, in force since 2013.
- Bilateral agreement with Nicaragua, in force since 2017.
- Bilateral agreement with El Salvador, in force since 2017.
- Trade agreement with the United Kingdom, signed in 2019.

8.5 UN Convention for the International Sale of Goods

Ecuador is a party to the UN Convention for the International Sale of Goods since 1992.

This Convention applies to contracts for sale of goods between parties whose places of business are in different States:

- (a) when the States are contracting states; or
- (b) when the rules of private international law led to application of the law of a contracting state.

This Convention only governs the form of the sales contract and the rights and obligations of the seller and the buyers arising from such a contract.

The Convention has facilitated international trade by standardizing practices among contracting members and, in some cases, other States not yet a party to the Convention. It has simplified regulations and backs countries by allowing them to invoke its regulations.



09

INTELLECTUAL PROPERTY



9

INTELLECTUAL PROPERTY

The Intellectual Property regime in Ecuador is governed by Andean decisions and by local regulations which operate simultaneously to implement the applicable provisions. IP regulations try to be standardized within the Andean Community (Bolivia, Colombia, Ecuador and Peru) as an extraterritorial effort to reach a standard regulation of IP matters in the region. There are certain legal developments that have

become very useful tools within the Andean Pact, such as the Andean opposition. Nevertheless, each member country has an independent authority and performs independent tasks. The local legislation was updated in 2016 with the approval of the Organic Code for Knowledge Economy (*Código Orgánico de la Economía Social de los Conocimientos*), which replaced the old IP law.

9.1 Trademarks and service marks

Industrial property, which includes trademarks, service marks, trade names, and slogans, is regulated in Decision 486 of the Andean Community, which was issued in 2001 and is valid as supranational regulation. Locally, industrial property is regulated by Title III of the Organic Code for Knowledge Economy.

Trademarks, which include both product marks and service marks, must be registered with the IP Authority (*Servicio Nacional de Derechos Intelectuales*, SENADI for its Spanish acronym) to be duly protected and enforceable against third parties. The Nice Classification applies. In our experience, an application takes approximately eight months from filing to registration if no opposition is filed by a third party. With an opposition, a registration can take up to 15 months to be issued. The registration of a trademark grants protection for ten years from the date the registration is granted, and renewals can be filed successively without limitation after the ten-year period, for equal periods.

Trade names are protected by continuous use. An application can be filed to have trade names as

registered trademarks, and the registration grants protection for ten years. When trade names are registered and renewal is required, the renewal application must include proof of use.

Any assignment agreement, change of address, change of name, license agreements or limitations must be registered with the TM authority to be considered valid and enforceable against third parties. Priority claims are accepted for proprietors of prior registrations in the Andean Community, or within the period granted by the Paris Convention.

It is very important to note that cancellation applications for lack of use can be filed against trademarks that have been registered for more than three years. To overcome a cancellation action, the proprietor must file proof that the trademark has been used during the three years before the cancellation action was filed, to identify, offer and sell the products or services protected by the registration. A trademark can be completely or partially cancelled, and the cancellation applicant has an exclusive right to file the cancelled trademark in its name.

9.2 Patents

Patents are also included within industrial property by Decision 486 of the Andean Community and by our legislation, along with utility models and industrial designs. Priority can be claimed for the first application validly claimed before an international authority if the priority document has been legalized (including an apostille), within twelve months from the original filing date for patents and utility models, and within six months for industrial designs and trademarks. Inventions are protected for products or procedures when they are new, have an inventive step and allow an industrial application.

Patent protection, which is limited to the claims, lasts during 20 years from the filing date, as long as annuities are paid on time. Utility models, which protect forms, configurations or disposition of elements that provide a better or different use, are protected for ten years from the filing date. Industrial designs, which protect the visual appearance of a product without changing the use or destiny, are also protected for ten years.

Any assignment, modification, license or limitation must be registered with the patent authority at SENADI.

9.3 Copyright and design

Intellectual property rights in Ecuador are protected as author's rights, regarding the ways in which an idea is expressed and not over the idea itself. It is regulated in Decision 351 of the Andean Community and locally in Chapter III of the Organic Code for Knowledge Economy. Authors have a moral right to be acknowledged as such and the corresponding economic rights for the commercial exploitation. Works which are protected as intellectual property range from books, articles, novels, poems, essays, scripts, lectures, encyclopedias, databases, lyrics, sculptures, paintings, photographs and maps to software, without concern to the material medium in which the idea is embodied.

Author's rights are protected from the moment the work is created and fixed on a material support, without any registration obligation. The applicable provisions determine that the registration of these rights with the national authority provides a solid support for authors to claim their ownership over the work, especially against third parties.

Corporations can own economic rights over works protected under intellectual property rights, but only individuals can be authors. Intellectual property rights developed under a working contract or under a services contract are considered to be owned by authors, unless specific provisions have been determined between the parties. Therefore, assignment agreements regarding the economic rights related to intellectual property are very important, as they determine the ownership over such rights.

The applicable provisions determine that economic rights related to intellectual property are protected throughout the author's life and 70 years after his or her death, even when the proprietor is a corporation and even if it is a work that was not published before the author's death. Afterwards, the work is subject to the public domain and can be used freely by any individual, although it is necessary to always state who the original author was.

9.4 Enforcement

Enforcement actions for all intellectual property rights, including industrial property, are guaranteed through an administrative action before the intellectual property authority at SENADI. This authority can act *ex officio* or upon request, and is entitled to inspect, analyze, and sanction any illegal conduct or infringement of intellectual property rights.

Precautionary measures range from a sudden inspection to a request for information to identify the infringement and the corresponding sanction. Precautionary measures can be ordered by the administrative officer at any time during the

administrative action and can also be denied or revoked at any time. The claimant can be required to provide a financial warranty sufficient to protect the respondent from the negative effects derived from the administrative action, and to prevent abuses.

Sanctions are determined by the IP authority and range from temporary closure of the establishment (between three and seven days) to a fine from USD 600 to USD 56,800, depending on the nature of the infringement and the timeframe in which it occurred.

9.5 Confidential information

Information is to be kept confidential within a business relationship and can be protected as a trade secret when it has been marked as confidential information, when it is not easily obtained, and when it has commercial value for the proprietor or for anyone else. Efforts to keep the information confidential must be proven in order for protection to be claimed. Decision 486 of the Andean Community determines that a

trade secret is any confidential information from an individual or a corporation that can be used in a productive, industrial, or commercial activity and that can be transferred to a third party. Any person that has access to confidential information because of a job, a profession or a business relationship must prevent any use or publication when the information has been clearly marked as confidential.



10

LABOR AND EMPLOYMENT

10

LABOR AND EMPLOYMENT

10.1 Overview

10.1.1 Contracts

The general rule is that all labor hiring must always be direct. The standard labor contract is the indefinite-term contract. A trial period of up to 90 days can be established.

There are some special labor contracts that would apply if certain requirements were met, such as: (i) temporary contract; (ii) occasional contract; (iii) seasonal contract; (iv) contract for specific work; (v) contract for specific work or service within the business line; and (vi) emergency contracts. There are other contracts regulated by the Ministry of Labor for sectors like tourism, production, agriculture, and others.

10.1.2 Work shifts

The ordinary work shift is eight hours a day, five days a week. Permanent part-time work can be established. Overtime is paid with 50% or 100% surcharge depending if occurring after the daily 8-hour shift or in weekends. It is possible to request the Ministry of Labor's approval for special work shifts depending on the needs of the employer.

10.1.3 Vacation and holidays

Employees have the right to fifteen consecutive vacation days per year. Vacation days cannot be compensated with money. Long-term workers are

granted additional vacation days.

National holidays are mandatory rest days.

January 1; Monday and Tuesday of Carnival; Good Friday; May 1; May 24; August 10; October 9; November 2; November 3, and December 25 are national holidays. There are also local holidays in regions and provinces.

10.1.4 Registration

All contracts must be registered in the online platform of the Ministry of Labor. All employees must be enrolled in the Ecuadorian Social Security Institute (IESS for its Spanish acronym) from the first day of employment. This obligation is fulfilled by submitting an online entrance notice. Social Security contributions must be paid monthly and include the employee's and the employer's contribution.

10.1.5 Disciplinary regime

Internal work regulations issued by the employer must be approved by the Ministry of Labor. Without this approval, disciplinary action will not have an effect. To be applicable, the disciplinary regime must be included in the internal regulations.

10.2 Legislative Protections

10.2.1 Disability protection

The Ecuadorian Constitution guarantees equal employment opportunity to people with physical disabilities. Any employer with 25 or more employees must hire no less than 4% of disabled individuals out of the total number of regular employees.

If an employer terminates the labor contract of a disabled employee or the contract of a disabled person's substitute or of an employee in charge of a disabled person, an additional severance pay is generated.

10.2.2. Gender protection

All employees must receive equal pay in accordance with their jobs. Discriminatory remuneration based on gender is forbidden.

Termination of the contract of a female worker in a maternity-related situation is forbidden and can be declared ineffective by a judge.

10.3 Unions

The Ecuadorian Constitution guarantees the right of employees to have unions as well as collective bargaining agreements if they meet certain requirements, such as number of employees, ministerial approval, among others.

10.4 Termination Rights

In all termination cases, regardless of the form of termination, the employer and the employee must sign a labor termination agreement issued on the online platform of the Labor Ministry. The

10.2.3. Discrimination protection

Discrimination on the basis of the following categories is prohibited:

- Age
- Place of birth
- Gender
- Language
- Political or religious beliefs
- Judicial record
- Migration status
- Sexual orientation
- Health (including HIV status, disability, and physical problems)
- Social or economic status
- Any other types of discrimination

Employers must have a protocol in place to prevent discrimination, bullying, labor harassment and violence at work.

If termination is considered discriminatory, the employee concerned is entitled to additional severance pay.

It is forbidden to terminate employment contracts during the period when unions are forming. Sudden dismissal of union leaders can be declared ineffective by a judge, and they can be reinstated to their jobs.

agreement must then be registered with proof of payment of the applicable compensation or severance payment.

10.4.1 General terminations

Labor law stipulates the following causes for contract termination:

- For causes legally set forth in the contract;
- By mutual agreement (resignation);
- Expiration of contract due to completion of the work;
- The employer's death or incapacity, or the entity's deregistration;
- The worker's death or permanent disability;
- Force majeure making the rendering of services impossible, such as fire, earthquake, storm, explosion, field pests, war, and any other extraordinary event that could not be foreseen.

10.4.2 Termination for just cause

Employees may terminate the contract for just cause and with severance payment upon approval of the Labor Inspector in the following situations:

- Due to serious insults by the employer, his/her relatives or representatives, his/her spouse or common-law spouse, ancestors or descendants.
- Due to decrease or lack of payment or of punctual payment of the agreed remuneration; and
- Due to the employer's request that the employee should perform work other than that agreed upon, except in an emergency as defined by the Labor Code.

Termination by the employer with just cause and with approval from the Labor Inspector is permitted in the following cases:

- Repeated and unjustified faults regarding punctuality, job attendance, or job

abandonment without cause during at least three days in the same month;

- Due to serious indiscipline or noncompliance with approved internal work rules;
- The worker's lack of honesty or immoral behavior;
- Serious injuries inflicted on the employer, his/her spouse or common-law spouse, ancestors or descendants, or his/her representative;
- The worker's manifest ineptitude with respect to the occupation or work for which he/she was hired;
- Due to unjustified complaint against the employer regarding Social Security obligations; however, if the complaint is justified, the employee will be protected from termination during two years; and
- Non-compliance with safety, prevention and hygiene measures required by law, by its regulations or by the competent authority; or to contradict, without due justification, a doctor's prescription or medical opinions.

10.4.3. Sudden dismissal

Sudden dismissal (or dismissal without notice) with severance payment can be put into effect by the employer at any time, no justification being legally required. There are two exceptions: Dismissal of union leaders or of pregnant employees in maternity leave or in a reduced daily schedule until one year has elapsed after giving birth.

10.4.4. Termination payments

Severance for sudden dismissal: It is equivalent to the employee's last regular and complete remuneration, multiplied by the employee's number of years of service. It cannot be for less

than three months nor more than 25 months of the employee's remuneration.

“Desahucio” bonus: It is equivalent to 25% of the employee's last regular and complete remuneration, multiplied by the employee's years of service (complete years only).

Unpaid labor benefits: The following payments are due in all termination cases:

- Unpaid thirteenth salary
- Unpaid fourteenth salary

- Unused vacation (to be paid upon termination only)
- Unpaid reserve funds

Retirement pension paid by the employer: The employer must pay a monthly retirement pension in the event of dismissal of an employee who has completed 20 years of work or in all forms of termination of an employee who has completed 25 years of work.

10.5 Employment of a Foreign Person (visas)

10.5.1 Visa/work permit requirements

A work visa is required for a foreigner to work in Ecuador. The law establishes several visa categories that allow a foreigner to work in this country. Requirements may vary depending on

the type of visa requested.

The visa is issued by the Ministry of Foreign Affairs and Human Mobility and can be requested once the employee is in Ecuador, or at the Ecuadorian Consulate in their country.

10.6 Compulsory Superannuation

Affiliation with the Ecuadorian Social Security Institute is mandatory. A percentage of the contribution is allocated to the employee's retirement pension and another percentage is

allocated to a savings account for the employee. There is no other private or public mandatory superannuation.

10.7 Workplace Safety Laws

Employers must comply with workplace safety regulations which depend on the industry and on each job specifications. The most important workplace safety obligations include the following:

- To have health and safety regulations in place if there are ten or more employees.
- To perform the work in suitable conditions.
- To request pre-employment, occupational,

- and post-employment medical exams.
- To establish an occupational health and hygiene committee at all workplaces having more than fifteen employees.
- To comply with all prevention, safety, and hygiene measures in the workplace, including

- all regulations regarding adequate mobilization of the disabled.
- To report health and safety issues to the Labor Ministry and to the Social Security Institute on an annual basis.

10.8 Worker's Compensation

10.8.1 Income

Each year, the Labor Ministry establishes the amount of the consolidated basic salary which is the minimum wage employees receive. The monthly minimum wage for 2021 is USD 400. There are also basic salaries set by the industry concerned. Besides the monthly salary, there are other amounts that all employers must pay.

All labor contracts must cover at least the following: (i) salary (ii) employer contribution to

the Social Security Institute (IESS); (iii) thirteenth and fourteenth salaries; (iv) reserve funds.

Certain deductions from the employee's income can be made: (i) personal contribution to the Social Security Institute; (ii) income tax generated by the employee; (iii) penalty fee established in internal work regulations; (iv) employee's union contributions; (v) payments imposed by court order (for child support); (vi) any other amount expressly authorized by the employee.

10.9. Pay Equity

10.10.1 Profit sharing

Fifteen percent of the employer's profits must be distributed among all the employees (and former employees that worked during the fiscal year) in proportion to the length of service and the number

of family dependents. The amount is distributed as follows: (i) 10% paid directly to the employees, regardless of the remuneration received. (ii) 5% paid to the employees in proportion to their dependents.



11

IMMIGRATION

11

IMMIGRATION

11.1 Overview

According to the Constitution, foreigners who are in Ecuadorian territory have the same rights and duties as Ecuadorian nationals.

Foreigners may enter Ecuador either as temporary

visitors or under a temporary resident visa (which may be issued for a renewable two-year period) or under a permanent resident visa (indefinite term).

11.2 Temporary visitors

Ecuadorian law establishes the following immigration categories for temporary visitors: (i) transients, (ii) tourists, and (iii) persons subject to international protection.

Transient visas are granted to foreign nationals who travel through the Ecuadorian territory as in-transit passengers, crew members of carriers engaged in international transport, temporary immigrant workers, or persons residing in border areas in accordance with international instruments and other provisions contained in the regulations for the law.

Foreign nationals entering Ecuador as transients are allowed several entries to perform activities as immigrant workers or trade activities, among others, provided that such activities do not involve concurrent imports of goods.

Tourist visas are granted by the Migration Police at the port of entry for an aggregate 90 days per year. This period is extendable for an additional, continuous 90-day period within the same year.

An additional 30-day period is applicable to tourists only. Tourists are granted that period to regularize

their immigration status in Ecuador, without any sanctions once the first 90 days of their stay have elapsed. It is not applicable to other temporary visitor categories.

Tourist visas do not allow the holder to perform any kind of work in Ecuador.

Nationals of several countries are not allowed to enter Ecuador as transients/tourists and, instead, must hold an Ecuadorian visa granted by an Ecuadorian Consulate before they travel. These countries are Afghanistan, Angola, Bangladesh, Cameroon, Democratic Republic of the Congo, Republic of the Congo, Cuba, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Haiti, India, Iran, Iraq, Ivory Coast, Kenya, Libya, Nepal, Nigeria, Mali, Myanmar, Pakistan, Philippines, Somalia, Senegal, Syria, Sri Lanka, Venezuela, Vietnam and Yemen.

Tourist and transient visa holders are allowed to change their immigration status in Ecuador, provided that they comply with the requirements of the resident visas applied by them.

11.3 Permanent resident visas

To obtain a permanent resident visa, the applicant must meet one of the following conditions:

1. Hold an Ecuadorian temporary resident visa for at least 21 consecutive months, justifying that the condition for issuing the temporary resident visa is maintained.
2. Be married or have a legally recognized domestic partnership with an Ecuadorian citizen or a foreign citizen who holds an Ecuadorian permanent resident visa.
3. Be a foreign under-age citizen or a disabled foreign citizen who is dependent upon an Ecuadorian person or upon a foreign citizen who holds an Ecuadorian permanent resident visa.

4. Be a relative up to the second degree of consanguinity or affinity of an Ecuadorian citizen or a foreign citizen who holds an Ecuadorian permanent resident visa.

For the first two years from the date of issuance of the permanent resident visa, the visa holder is not allowed to leave Ecuador for more than 180 days in each year. Currently, an infringement of this rule will result in a USD 200 fine.

After the first two-year period, the permanent resident visa holder may leave Ecuador for up to two consecutive years without forfeiting the visa. If this limit is exceeded, the visa will be cancelled.

11.4 Temporary resident visas

Foreign citizens may obtain a temporary resident visa within the following categories:

- **Work:** For foreign citizens to carry out work activities under an employment relationship in public or private areas or as a freelancer.
- **Rentier:** For foreign citizens with funds owned from an Ecuadorian source or a foreign source, to live off the income produced by those sources or off any other lawful income.
- **Retiree:** For foreign citizens who receive a foreign pension that allows them to cover their expenses.
- **Investor:** For foreign citizens who invest in Ecuador and have funds deriving from a lawful source to carry out productive or commercial activities in Ecuador (currently, the minimum

amount of investment is USD 40,000).

- **Scientist, researcher or academic:** For foreign citizens engaged in scientific, research or academic activities hired by public or private entities, or who take part in programs under the Ecuadorian education system to carry out work in their specialty.
- **Athlete, artist or cultural manager:** For foreign citizens hired by an individual or legal entity established in Ecuador to conduct activities of that nature.
- **Clergy or religious volunteer of an organization with legal status recognized by Ecuador:** For foreign citizens who officially conduct religious activities.

- **Volunteer-missionary:** For foreign citizens who, with support of a non-profit organization established in Ecuador, altruistically and voluntarily provide their services to the community.
- **Student:** To study at elementary, secondary, undergraduate or postgraduate educational centers, or at institutions that teach the official languages of Ecuador as well as for pre-professional or professional internships.
- **Professional, technician, technologist or artisan:** For foreign citizens who enter the country to exercise a profession or a technical, technological or artisan activity.
- **Aid workers, non-governmental organizations and foreign press:** For foreign citizens who are part of a cooperation agreement between Ecuadorian public institutions and public institutions of another State, or who are part of a foreign non-governmental organization that has entered into a basic agreement with the local human mobility authority legally established in the country; as well as for foreign correspondents.
- **International treaty:** For people who enter the country under a visa determined by an international instrument of which Ecuador is a party.
- **Family dependent:** For foreign children of, and the foreign spouse or partner in a legally recognized domestic partnership with, a foreign citizen who holds a resident visa (for either temporary or permanent residence).
- **International protection:** For foreign citizens recognized by Ecuador as asylees, refugees or stateless.
- **Marine crew:** For foreign crew members of special, commercial or industrial vessels undertaking maneuvers and service.
- **Exceptional visa:** To conduct specialized activities in strategic sectors or for development of projects classified as strategic or of national interest. As established in the Regulations for the Law on Human Mobility, the main requirement to obtain an exceptional visa is a declaration in that regard by the public entity in charge of the strategic sector or of a work of public interest.
- **Diplomatic visas:** For foreign citizens who are officials of embassies, consulates or international and technical assistance organizations duly accredited in Ecuador, to temporarily perform their duties until the end of their mission.

Among other specific requirements to obtain any resident visa, the applicant must submit an updated police record or judiciary certificate from his/her place of residence valid for the last five years. It must be apostilled by the competent authorities of the country of issuance if issued in a country that is a member of The Hague Apostille Convention of 1961; otherwise, the document must be authenticated by the Ecuadorian Consul in the place of issuance.

In the case of residence in countries with federal governments, the applicant must submit two updated criminal record certificates: one issued by the state authority of the applicant's place of residence, and another issued by the federal authority of the respective country (in both cases the certificates must be apostilled/authenticated).

The decision to grant or deny a visa is a sovereign power of the Ecuadorian State.

11.5 Work visas

Persons employed by an individual or a legal entity established in Ecuador need a temporary resident work visa, a Mercosur visa, a humanitarian visa, or a permanent resident visa to be able to work.

Currently, there is no percentage limit for hiring foreign personnel in Ecuador, except in the hydrocarbon and mining industries where the maximum percentages range from 5 to 25%.

11.6 Investment priority visas

There is no special treatment or special program for investor visas.

The applicant must obtain a regular temporary

resident investor visa which currently requires an at least USD 40,000 investment.



12

REAL ESTATE



12

REAL ESTATE

12.1 Basis of land ownership

Ecuador's Constitution recognizes and guarantees the right to private property as a constitutional right. It should be noted that the Civil Code regulates property and ownership as legal synonyms. Currently, ownership may be public, private, communal, state-owned, associative, cooperative and mixed. The right to ownership has the following characteristics: (i) absolute *erga omnes* entitlement; however, it does have some limits; (ii) full, enjoying all the powers conferred by the legal system; (iii) exclusive, which is a single right falling on the same matter; (iv) perpetual, of the same duration as the matter involved; (v) abstract, independent from its powers, permitting transfer, enjoyment or use; and (vi) elastic, permitting the creation of third-party rights *in rem*.

It is important to note that while the Ecuadorian legal system recognizes the existence of national property and public property, the property regime for national matters is different. National property belongs to the Republic as a whole; the State is the sole holder of ownership rights, but the inhabitants are allowed its use. For public property, State ownership and power of disposal are more clearly stated since access can be restricted more easily to this kind of property.

Plots of land are corporeal immovable property and the Ecuadorian legal system recognizes three categories for this type of property.

Due to its nature, land belongs to the category of immovable property. The right exercised on plots of land is a real right of enjoyment since it covers the right of ownership or possession. The right

of ownership grants the power of use, enjoyment and disposal, also including economic use of the land owned.

As for limitations to the right of ownership, these are based on certain parameters such as urban planning, environmental preservation, national defense, and others.

It is necessary to emphasize that Ecuador's legal system recognizes that title and mode are necessary to acquire property. Title is the basis that justifies the mode which occurs during the performance stage when obligation to deliver (the immovable property in this case) arises. Three types are possible: (i) law, (ii) contract, or (iii) ruling.

Regarding the first type, it takes place when there is declaration of public utility. The State, in use of its public powers, can acquire immovable properties through a declaration of public utility. Such declaration is made when a public need exists, provided that the procedure established in the Organic Law on the National Public Procurement System is followed. The second type is explained in the next paragraph, but it implies the existence of a contract of sale. Lastly, title can also be obtained through a ruling when ordered by a judicial authority.

Mode, in turn, occurs during the performance stage and implies transfer of ownership. In other words, it is the obligation to deliver. The legal system recognizes the following modes: (i) occupancy, (ii) accession, (iii) delivery, (iv) succession due to death, and (v) acquisitive prescription. Occupancy,

accession and prescription are 'original modes' or means of acquiring property. Occupancy applies to things that do not have an owner - *res nullius* - and accession applies to fruit while succession on account of death and delivery are derivative titles. The mode, for the purposes of this topic,

is delivery, when the seller has the obligation to deliver and transfer ownership of the immovable property, but this takes place only if a contract of sale exists.

12.2 Process for buying and selling land

Plots of land are considered immovable property. Before entering into a contract of sale, a consent stage must exist whereby the contractual offer is stated in which either the prospective buyer or seller makes a proposal. For the offer to be valid, it must be serious and complete or sufficiently specific. The next step is acceptance of the offer. In the Ecuadorian legal system, the offer-acceptance regime implies that acceptance must be identical to the content of the offer, known as mirror offer in the U.S. All of the above is part of the pre-contractual stage for a purchase of a plot of land.

The contract is a solemn contract since it must comply with certain special formalities in order to have civil effects as established in the Constitution. The contract of sale is a contract in which a party agrees to deliver a thing, in this case the immovable property, and the other party agrees to pay a sum of money for it. The essence of a contract of sale is the transfer of the right of ownership falling on an immovable property; therefore, it is a deed conveying title. The contract of sale for a plot of land must be made through a notarial instrument which is the required formality in addition to consent.

As a rule, a plot of land is transferable, provided that its purchase is not prohibited under the legal scenarios described below. The Constitution establishes that purchase is prohibited if there is illicit object in the transfer and if the property is for public use. In the event that a plot of land

is attached, it may be sold according to two conditions: (i) the buyer's consent, and (ii) a judicial authorization.

The price of a contract of sale must be at least 50% in cash, and the remainder may be paid in kind. If the percentage of payment in kind other than in cash exceeds 50% of the contract, it will be considered barter. The price can be agreed by the parties to the contract or by a third party; however, there must be certainty and seriousness with regards to price determination.

Both buyer and seller must have capacity to contract. Curiously, Ecuador's legal system admits selling someone else's property, so a contract for sale of land can be sold by someone who is not the owner of the land - and the contract will nonetheless be valid. The effects are that the contract would be ineffective as against the true owner, even if subsequently there is ratification of the sale, which means that the buyer is considered to be the owner from the time the contract was executed.

Risks and improvements which may occur before the buyer receives the plot of land are assumed by the buyer. Delivery of the land takes place immediately upon execution of the contract, unless the parties to the contract have established a delivery deadline. If the buyer defaults on receipt of the land, it must pay the price, thereby releasing the seller from the regular upkeep and then will

only be liable for gross negligence or fraud.

The contract of sale is made through a notarial instrument; therefore a lawyer must draw up a draft that will be recorded by a notary public. As a rule, the supporting documents for the notarial instrument are those listed below, although each real estate registry may request other documents.

The following supporting documents are required:

1. Certificate of property maintenance fees. It applies if the plot of land is subject to a condominium ownership regime. This certificate is valid for 60 days from the date of issuance and must include the property administrator's appointment and authentication of signatures.
2. Certificate of encumbrances issued by the real estate registry in each district. Depending on the district, the certificate may be issued digitally or in hard copy.
3. Payment of the real property tax for the current year.
4. Copies of citizen ID cards, passports and voting certificates (if applicable) of the parties to the contract.
5. If one of the parties to the contract is a legal entity, it must include supporting documents to evidence that the party appearing on its behalf is a legal representative and is authorized. This also applies if the seller or buyer has entered into a prenuptial agreement that must be enclosed with the instrument.
6. If sale is by heirs, it is necessary to enclose proof of payment of the inheritance, gift and legacies tax.
7. If the property is located in Quito, it is necessary to submit proof of payment of the tax on real estate transfer, profit, capital gains, and the special contribution for improvements. The

appraisal certificate (*cédula catastral*) issued by the Municipal Appraisals Department must also be submitted.

8. Payment to the Consejo Provincial (record of taxes paid).

The notary will record the contract of sale for the plot of land in a notarial instrument which must be signed by the parties. Two copies of the instrument will be issued. The value of the notarial process will depend on the value of the land; notaries usually work based on price ranges. The contract is perfected at this point, but for the delivery to take effect it is necessary to register the contract in the real estate registry of the district where the land is located. In general, the same supporting documents required by the notary to perfect the contract are needed to record the sale in the real estate registry. However, it is expected that requirements will vary depending on each district, so it is necessary to check this information at the jurisdiction where the plot is located.

If the State acquires immovable property by means of a declaration of public utility, the following must be submitted:

1. Property registration certificate.
2. Appraisal by the relevant municipality.
3. Certification of available funds.
4. Announcement of the project (if applicable)

Notice of declaration of public utility is given to the owners, persons in possession and mortgage creditors, and the authority is authorized to immediately take possession of the immovable property. This must be recorded in the real estate registry. Then the price for the property will be negotiated, which must be no more than 10% above the appraisal value recorded in the registry and on which the real property tax was paid. If no agreement is reached, the price will be the appraisal value.

12.3 Mortgages

A mortgage is a right *in rem* which implies a guaranteed obligation created on immovable property as set forth in several articles of the Constitution. In practice, however, a mortgage is a contract whereby the mortgagor agrees to create a mortgage right *in rem* in favor of a mortgagee, and the mortgage is foreclosed if a condition (usually nonpayment) occurs. The owner or whoever has the right of usufruct may create a mortgage on real property, and this will also affect movables by accession, incorporation or use. The mortgage is extended to additions, improvements, rent accrued for the lease, and proceeds of insurance on the mortgaged asset. However, extension does not apply to the fruit of mines, thus reaffirming that it is only useful for immovable property.

Regarding the characteristics of the mortgage agreement, it should be noted that it may be an accessory or principal contract since it aims to ensure the performance of a future obligation. A mortgage can be open or closed. An open mortgage is created before a principal obligation exists; it is generally granted for a shorter period and can be paid without an encumbrance; therefore, it involves a higher risk. In a closed mortgage, the mortgagor is allowed a specific period to pay off the mortgage, making refinancing or renegotiation impossible. Furthermore, a mortgage foreclosure action is indivisible with regard to third parties. The action is executed on the entire mortgaged asset. The mortgage agreement is a solemn contract perfected by means of a notarial instrument. Registration of the mortgage agreement is the means for creating the mortgage right *in rem*, similar to what happens in a purchase and sale. If a foreign mortgage agreement has been entered into, it must also be registered in order for the mortgage right *in rem* to arise. The mortgage right *in rem* can be subject to a term or condition precedent or subsequent; when the condition or

term is fulfilled, the right is enforced.

The Ecuadorian legal system recognizes that a person who can transfer real property can create a mortgage right *in rem*. Furthermore, any person can create a mortgage right *in rem* for someone else's debt, thus changing the legal status to that of a mortgagor. The mortgage does not prevent a transfer of the real right of ownership to a third party, since the third party will be obliged to pay the obligation. Creation of a mortgage enables the parties to agree on a voluntary prohibition to transfer.

A mortgage foreclosure action does not exclude the action *in personam*; therefore, it is possible to request both. The advantage of the mortgage foreclosure action is that it grants a preferential right. The mortgage grants the right to improvements since the creditor may be paid by dation in payment. If the mortgaged property deteriorates, the creditor can request a replacement or an improvement. If the debtor fails to do as requested, the creditor may demand payment of the debt, irrespective of whether there is an established due date, or may seek measures to protect the debtor's assets. In respect of a mortgage, there is the concept of *emplazamiento* which consists of a notice given to the creditors that a mortgage will be created.

The maximum value of the mortgage is twice the value of the principal obligation; if the value is higher, then the *quanti minoris* action applies on the excess (Article 2333). The mortgage right *in rem* ends when: (i) the underlying principal obligation is extinguished, (ii) the term ends, or (iii) at the unilateral will of the mortgagee.

The following are the requirements for registering a mortgage:

1. Reference to the contract to which the

mortgage pertains.

2. Amount of the mortgage.
3. Certificate of property maintenance fees. This applies if the plot of land is subject to a condominium ownership regime. The certificate is valid for 60 days from the date of issuance and must include the appointment of the property administrator and authentication of signatures.
4. Certificate of encumbrances: It is issued by the real estate registry in each district. Depending on the district, the certificate may be issued digitally or in hard copy.
5. Payment of the real property tax for the current year.
6. Copies of citizen ID cards, passports and voting certificates (if applicable) of the parties to the contract.
7. If one of the parties to the contract is a legal entity, it must include supporting documents to evidence that the appearing party is a legal representative and is authorized. This also applies if the seller or buyer has a prenuptial agreement which must be enclosed with the instrument.
8. If the mortgage is made by heirs, it is necessary to enclose proof of payment of the inheritance, gift and legacies tax.
9. The appraisal certificate (*cédula catastral*) issued by the Municipal Appraisals Department.

12.4 Leases

In a lease agreement, one party grants the enjoyment of an immovable property and the other party pays a price for said enjoyment. Plots of land can be leased and the Ecuadorian legal system also authorizes the lease of someone else's property, provided that the lessee has acted in good faith, granting it the action of peaceful possession in the event of dispossession. The price of the lease agreement may be in cash or in kind – i.e. fruits produced by the leased asset. If the lease is awarded to two individuals, preference is given to the person to whom it has been delivered. The lease agreement can be oral or in writing but if the rent amounts to more than one consolidated basic salary, the agreement must be in writing and recorded with a notary within thirty days of execution. As a general rule, the agreement will have a minimum two-year duration. Under the principle of freedom to contract, the parties may agree that the lease agreement will be granted by

means of a notarial instrument since the general rule is that the contract is private.

If transfer of ownership of the leased premises occurs, the lease agreement terminates and the lessee will be allowed three months to vacate the place, unless the lease agreement was executed by means of a notarial instrument recorded in the real estate registry of the respective district. To terminate the lease agreement, the lessor must give 90 days notice to the lessee; otherwise it will be understood that the agreement has been renewed. If the leased property is subject to attachment, the lessee is not deprived from occupying the property until the auction takes place. The lessor must give written authorization for the subletting or assignment to go ahead.

The lessor's obligations are: (i) To deliver the asset to the lessee, and (ii) to assure the lessee the enjoyment of the asset. If the lessor, through

his fault, is unable to deliver the asset, the lessee has the right to withdraw from the agreement. But if the lessor defaults on the delivery, the lessee may withdraw from the agreement and claim compensation for damages. The lessee's

obligations are: (i) To use the asset as agreed, (ii) to keep the leased asset in good repair, (iii) to make any repairs incumbent upon the lessee, (iv) payment of the price.



13

ENVIRONMENTAL LAW

13

ENVIRONMENTAL LAW

Ecuador’s environmental regime is focused on guaranteeing a sustainable and balanced development model to encourage cultural diversity and biodiversity conservation. Since the Constitution considers nature as a person subject to rights, government officials must assure a stable economic development while also implementing measures to protect the ecosystems and regenerative processes.

As part of the National Development Plan imposed by former President Lenin Moreno (2017-2021), environmental goals were established to reduce environmental contamination, which include:

1. To prevent the difference between ecological footprint and biocapacity from falling below 0.35 global hectares per capita.
2. To maintain 16% of the national territory under conservation or environmental management.
3. To reduce gross deforestation to 15% of forest reference emission levels.
4. To reduce and remediate sources of contamination from the hydrocarbon industry
5. To reduce the climate change vulnerability

index of the population, livelihoods and ecosystems from high to medium.

Former President Moreno’s term ended on May 24, 2021, and since Ecuador’s economy is taking a hit from the SARS COVID-19 pandemic, the new government faces substantial challenges to reinvigorate the country’s financial system without ignoring environmental issues.

In March 2020, in the interests of a so-called *institutional optimization*, the Ministry of Environment and the Water Secretariat were merged, leaving in doubt whether their effectiveness would improve with their institutional reorganization. More clarity is expected in 2021 regarding the ongoing conflict between mining/hydrocarbon interests and environmental preservation. Ecuador’s Constitutional Court is likely to rule on the legal viability of oil exploration and exploitation in Yasuni National Park. In addition, a political stance on mining exploration and exploitation is anticipated amid several conflicts between NGOs and international private companies (granted concessions by the government) that have been ongoing in recent years.

13.1 Zoning and Planning Issues

Ecuador has implemented a National System of Protected Areas to ensure the conservation of biodiversity and maintenance of ecological functions. This system is made up of environmentally sensitive zones where exploration and exploitation of non-renewable natural

resources (hydrocarbons and minerals) is banned.

The Ministry of the Environment is the state institution in charge of declaring and managing protected areas. Certain limitations on their use and enjoyment have been established so existing

property and other real rights can be restricted to ensure the proper conservation of the area concerned.

The environmental regime has defined specific parameters that must be observed before declaring a zone as part of the National System of Protected Areas. Depending on its nature and fragility, a specific area can be declared to be: (i) a national park; (ii) a wildlife sanctuary; (iii) a wildlife production reserve; (iv) a national recreation area; (v) a marine reserve; or (vi) a special area for biodiversity protection. The State may expropriate public or private property located within protected areas.

Activities permitted in the National System of Protected Areas must relate to preservation, research, recovery and restoration, education and culture, controlled recreation and tourism, controlled fishing and sport hunting, rational use of wild fauna and flora, and protection of the environment. However, these activities must abide by the corresponding Management Plan and require authorizations from the Ministry of the Environment (Unified Text of Secondary Environmental Legislation).

Works, projects or activities intended to be executed on declared land must not affect the functionality of the protected area and must comply with the management plan and zoning rules. However, even if they comply, these types of authorizations are given on an exceptional basis.

As mentioned, extractive hydrocarbon, logging and non-metallic mining activities are prohibited within the National System of Protected Areas and in areas declared intangible. All types of metallic mining in any of its phases are prohibited in protected areas, urban centers, and intangible

zones.

Regarding activities carried out outside protected areas and more closely related to the country's regular industrial activities, the environmental regime provides a number of legal guidelines to be observed when carrying out any project, work or authorized activity. To prevent, mitigate or correct undesirable environmental effects that they may cause, the Ministry of the Environment has made it a requirement to obtain environmental registrations or licenses prior to the execution of any activity that may have an impact on the environment.

Depending on the level of risk that it could represent, a person interested in carrying out such an activity, work or project must obtain an environmental license, registration, or certificate (the latter is not obligatory).

For instance, for an environmental license awarded to projects which are more prone to make a negative impact on the environment, the Ministry requires presentation of an Environmental Management Plan. That document must detail specific plans for impact, contingency, prevention, and mitigation; rehabilitation of affected areas; wildlife rescue (if applicable); closure and abandonment, among others.

Determination of the type of permission required for each activity (license, registration or certificate) can be accessed through the Single Environmental Information System (SUIA for its Spanish acronym). This is a mandatory computerized tool for the entities that make up the National Decentralized Environmental Management System and is the only online means used to carry out the entire environmental regularization process.

13.2 Environmental Laws

The main regulations governing environmental matters are:

1. **The Constitution of Ecuador:** It characterizes nature as a subject of rights, determines institutional competencies in environmental matters, and establishes the powers of the State with respect to use, enjoyment, and exploitation of natural resources.
2. **The Organic Environmental Code:** It establishes the environmental rights, duties and guarantees included in the Constitution as well as the instruments that reinforce their exercise which must ensure the sustainability, conservation, protection, and restoration of the environment.
3. **Regulations to the Organic Environmental Code:** It describes procedures and regulations for the provisions in the Organic Environmental Code. It also regulates the process to obtain environmental certificates, registrations and licenses.
4. **Unified Text of Secondary Environmental Legislation:** It determines certain aspects, including but not limited to basic environmental and biodiversity policies, environmental management, coastal resource management, forestry regime, special regime (Galapagos), and environmental quality.
5. **Solid Waste Management Regulations:** They regulate services for waste storage, sweeping, collection, transportation, final disposal and other aspects related to solid waste, regardless of the activity or generation source.
6. **Organic Criminal Code:** It lists the types of crimes against the environment and nature, including invasion of ecologically important areas, and air, water, and soil contamination.
7. **Environmental Regulations for Hydrocarbon Operations:** They regulate hydrocarbon operations from an environmental perspective to ensure that all exploration and exploitation activities and stages are conducted in compliance with the law.
8. **Environmental Regulations for Mining Operations:** They promote the sustainable development of mining operations in Ecuador through the establishment of norms, procedures, processes and sub-processes to prevent, control, mitigate, rehabilitate, remediate and offset the effects that mining activities may have on the environment and on society throughout the national territory.
9. **Municipal ordinances for environmental activities located within the jurisdiction of municipalities.**

13.3 Penalties for Breach

Regarding environmental damages, Ecuador has notoriously strict remediation and sanction policies. According to the law, the State has the responsibility to (i) compensate for the damages caused; (ii) punish the polluter; (iii) repair the victim's violated legal right; and (iii) establish

prevention systems to avoid potential damages from being committed again.

Environmental responsibility is based on the legal principle of strict liability and reversal of the burden of proof. In addition, according to the Constitution,

responsibility for remediation of environmental liabilities has no statute of limitations.

In terms of penalties, actions that contradict or fail to comply with the environmental regime may have criminal, civil and administrative consequences. The powers of the environmental authority include the power to impose sanctions for environmental violations by national or foreign individuals or legal entities. The violations established in the Organic Environmental Code are classified as minor, serious and very serious.

The sanctions are conditioned to the severity of the violation, i.e., minor, serious, or very serious. The Organic Environmental Code lists how can the State impose those sanctions:

1. Financial penalty.
2. Confiscation of the native, exotic or invasive wildlife species involved; tools; equipment; means of transportation and any other instruments used to commit the violation.
3. Destruction of the products; means of transport; tools or goods used to commit the violation.

13.4 Community Relations

On a related issue associated with environmental principles, the Constitution grants certain rights to ancestral peoples or indigenous communities in respect of activities in their territories.

The extraction of natural resources must comply with the principles of ILO Convention No. 169 regarding prior consultation processes that must be conducted before implementing a project. The right to prior consultation is included in the Constitution. Indigenous peoples do not have veto power.

4. Temporary suspension of the activity or of the official of performance.
5. Revocation of the authorization, contract termination and termination of the official endorsement of performance.
6. Refund, suspension, or loss of incentives.
7. Eviction of persons from the area where a violation is being committed with full guarantee of their rights, as well as dismantle and demolition of infrastructure or instruments used to commit the violation.

The obligation to integrally repair the damage inflicted will apply to violations that cause environmental harm.

It is noteworthy that Ecuador recognizes the performance of cultural and ancestral practices of communities, peoples and nationalities for non-commercial purposes. Under the Organic Environmental Code, these types of scenarios will not be considered a violation.

The Constitution also grants the right to a public consultation to the inhabitants of the area of influence of any project to exploit natural resources the State may wish to execute, including proposed bills that may affect communities within the area of a project. The communities consulted do not have veto power.

In addition, a general prior consultation is always conducted before an environmental license is granted and where the draft environmental management plan is explained to the community within the area of influence of a given project.

14

SECURITY OVER PERSONAL PROPERTY

14

SECURITY OVER PERSONAL PROPERTY

14.1 Overview

Security interest on property is a right granted by a debtor to a creditor to repossess all or part of the property if the debtor fails to comply with its

obligation. Security interests are accessory rights derived from a principal obligation. Pledge and mortgage are the most common security interests.

14.2 Personal Property Security Regime

The Ecuadorian Civil Code provides for a general right of pledge (*derecho de prenda*), which gives a creditor the right to demand the sale of the debtor's property, excluding real estate, to procure the fulfillment of an obligation that the debtor has failed to comply with, including interest and collection costs.

The Code of Commerce contemplates a pledge agreement over specific personal property, which must be made in writing with the parties' signatures authenticated by a notary). There are two types of pledge agreements: (i) for possessory commercial pledge, and (ii) for agricultural and industrial pledge. An agricultural and industrial pledge can only be created over animals, crops, agricultural products and machinery, industrial machinery and installations, etc. A possessory commercial pledge is applicable to all other types of assets.

A mortgage (*hipoteca*) is security interest

created by a debtor in favor of a creditor on the debtor's real estate or ships. Under a mortgage, the debtor retains possession of the mortgaged asset. However, in the event of payment default, the creditor has the right to initiate collection proceedings to sell the mortgaged assets, and the proceeds from the sale are used to pay any outstanding amount of the secured obligation. In order for a mortgage agreement to be valid, it must be drawn up in the form of a notarial instrument and registered with the real estate registry or vessel registry. A mortgage does not exclude the creditor's claim on the debtor's remaining property. The amount secured by a mortgage may be agreed upon between the debtor and the creditor, but cannot exceed twice the amount of the secured obligations. If the mortgage exceeds that amount, the mortgagor may ask to reduce the mortgage to such maximum amount.

15

CORPORATE INSOLVENCY

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CORPORATE INSOLVENCY

15.1 Overview

The Ecuadorian legal system provides for corporate bankruptcy and individual insolvency.

The general bankruptcy regime is not regulated by a specific statute since Ecuador does not have a bankruptcy law. Rather, it is included in general bodies of law applicable to all legal persons such as the Civil Code, the Organic General Procedural Code (OGPC), and, since the pandemic, the COVID-19 Humanitarian Support Law published on June 22, 2020 (Humanitarian Law). The only

particular statute enacted to regulate a specific aspect of this topic is the Reorganization in Bankruptcy Law (*Ley de Concurso Preventivo*), designed to prevent bankruptcy.

The bankruptcy regime has two objectives: (i) To avoid bankruptcy; and (ii) to allow creditors to collect the highest percentage of their claims when the debtor goes bankrupt.

15.2 Options for creditors

According Civil Code, whenever a debtor is unable to comply with its obligations due to an unavoidable accident, the debtor may voluntarily abandon assets to its creditors through an assignment of assets. Furthermore, bankruptcy occurs when a company cannot comply with its obligations as agreed.

Under local law, both situations— assignment of assets and bankruptcy — enable creditors to initiate bankruptcy proceedings (*concurso de acreedores*), which may be preventive, voluntary or involuntary, as further explained below.

15.3 Liquidation Process

The process to incorporate and cancel a company begins at the Ecuadorian Superintendency of Companies where the intent of shareholders, stakeholders, and others to terminate the company is expressed. There are two possibilities for dissolution: (i) voluntary dissolution and (ii) compulsory liquidation.

On the one hand, the process of voluntary dissolution includes a request to the Superintendency of Companies signed by the legal representative and followed by the appointment of a liquidator. The operational aspects of voluntary dissolution are controlled by the Dissolution and Liquidation Office of the Superintendency which

approves the termination process and issues the corresponding resolutions.

On the other hand, compulsory liquidation applies when it is declared applicable by the Superintendency of Companies on grounds described in the Law on Companies.

According to applicable legal provisions, a declaration of bankruptcy leads to compulsory liquidation. This process will be described below.

Neither the law nor its related regulations provide for a definite timeline for liquidation of a company. In fact, its size, the complexity of its business, and the segment it is engaged in will have a bearing on the process.

Under the Law on Companies, companies may be dissolved:

- a) *Ipso jure*;
- b) By decision of their shareholders;
- c) By decision of the Superintendency of Companies; or
- d) By final judgment.

Likewise, under the Law on Companies, a final declaration of bankruptcy constitutes grounds for court-ordered dissolution of companies.

It is important to consider that the *ipso jure* liquidation process does not require any declaration, publication or registration. However, once *ipso jure* dissolution has occurred, the Superintendency will, by resolution, order liquidation of the company, which must be initiated by the company's legal representative.

Along the same lines, a company may be dissolved and then liquidated when its losses reach 60% or more of its subscribed capital and the entirety of its reserve funds.

In both cases, the Superintendency must summon creditors so that they may submit documents to justify their claims within 60 days. This decision

must be notified to the Superintendency of Banks, the National Public Data Registry Office, and the Internal Revenue Service.

At the end of the 60-day period, the company's legal representative will have 60 days to qualify creditors' claims. The legal representative must pay the debts according to the order of priority specified in the Civil Code. The officer in charge of liquidation will only consider creditors who have proven their capacity as such in the timeframe established for this purpose as well as those recognized in the company's balance sheet with due justification. If creditors turn up after the legal term, their claims, if duly justified, will be considered at the end of the liquidation process.

Before making such payments, liquidation balance sheets must be prepared and submitted to the Superintendency of Companies for review. Subsequently, after payment is made, the shareholders must convene to examine and approve the final balance sheet. The remainder must be distributed according to each shareholder's share in the capital stock.

Finally, after the liquidation process the company must be canceled pursuant to Articles 407 to 414 of the Law on Companies.

Whatever the cause for dissolution, the company may be reactivated before the dissolution is registered in the Commercial Register, provided that the cause for dissolution has been resolved.

According to the OGPC, when a debtor is already in default, i.e., has not complied with any of the obligations at maturity, two alternative proceedings may be conducted: (i) voluntary bankruptcy, or (ii) involuntary bankruptcy.

15.4 Receivership

15.4.1 Voluntary bankruptcy

Under the OGPC, the debtor may ask the judge to initiate a voluntary bankruptcy proceeding by presenting a detailed description of its assets and rights, a statement of debts, valid credit instruments, and the reasons for the request. The judge must summon the creditors for a meeting that the receiver must also attend, order seizure of the debtor's assets, and order the consolidation of proceedings involving the debtor and concerning outstanding obligations.

The creditors' meeting is the debtor's last opportunity to reach an agreement with creditors for rehabilitation. This agreement requires the favorable vote of creditors who represent more than 50% of the claims, or a court decision— only if the creditors' claims are unfounded. Additionally, according to local law the creditors may oppose the declaration of bankruptcy, and the judge must issue a decision on it.

However, if the bankruptcy proceeding continues, the judge must order seizure and auction of the debtor's assets to pay the creditors according to the order of priority recognized in the Civil Code.

15.4.2 Involuntary bankruptcy

Involuntary bankruptcy is admissible in the

cases specified in the OGPC which states that insolvency is presumed when (i) the debtor has not paid obligations or relinquished assets when required by a writ of execution; (ii) the debtor has relinquished disputed assets, assets that are not in his/her possession, assets located outside the country, assets that consist of undocumented financial claims or claims against insolvent persons; (iii) the debtor has relinquished insufficient assets for payment according to their valuation or auction bids.

In any of the above cases, the creditor may ask to initiate an involuntary bankruptcy proceeding. Among other things, the judge must order the debtor to submit a detailed description of assets and rights, a statement of debts, and valid credit instruments to the court. Furthermore, the judge must summon the debtor to attend the creditors' meeting and order the debtor's interdiction. The debtor may oppose this procedure by paying the debt. If the debtor does not oppose bankruptcy, the judge must declare the debtor bankrupt and order seizure and auction of the debtor's assets, and the creditors must be paid according to the priority order established in the Civil Code.

Lastly, it must be taken into account that the OGPC provides that insolvency may be 'fortuitous', culpable or fraudulent, and that the Organic Criminal Code defines fraudulent bankruptcy as a crime.

15.5 Voluntary administration and judicial management

In the case of reorganization in bankruptcy regulated by the OGPC— which will be further

explained in the next section —, the company and the receiver must jointly manage the business

until the creditors convene.

If, after the debtor's existing assets have been seized their value is insufficient to cover all its debts, new assets will be seized. According to the

OGPC, the debtor's interdiction means that 50% of any assets acquired after interdiction will be distributed among the creditors, and the other 50% will be directly administered by the debtor.

15.6 Agreement with Creditors

Reorganization in bankruptcy aims to prevent the debtor from falling into default by reaching an agreement known as *concordato* between the debtor and the creditors.

Three statutes regulate reorganization in bankruptcy depending on the situation:

1. The Reorganization in Bankruptcy Law is applicable if the company was incorporated in Ecuador, if it is regulated by the Superintendency of Companies, if it owns assets amounting to more than USD 10,515.60 or has more than 100 permanent employees and has debts of more than USD 5,257.80, irrespective of whether the debts have already matured.

2. Reorganization proceedings under the OGPC apply if any of the above conditions is not met, if the debts have not yet matured, and if the debt does not exceed 120% of the debtor's assets. If debts have already matured or the debt exceeds that value, then the voluntary bankruptcy proceeding applies.

3. Due to the COVID-19 pandemic, the Humanitarian Law included certain provisions for special reorganization in the bankruptcy regime applicable to companies, irrespective of whether the debts have already matured. However, the regime only applies to processes initiated up to three years after publication of the Humanitarian Law.

15.7 Reorganization in Bankruptcy Law

The Reorganization in Bankruptcy Law states that certain companies must conduct a compulsory reorganization in bankruptcy proceeding before bankruptcy to pay their creditors within seven years.

The reorganization in bankruptcy proceeding is initiated by the debtor or the creditor at the Superintendency of Companies and not before a judge. Once the request is submitted, every collection action against the debtor stops and the debtor is forbidden from entering into contracts that might diminish its assets.

As an effect of the request for reorganization in bankruptcy under this statute, any action by the debtor listed in Article 26 of the Reorganization in Bankruptcy Law (actions that might seem fraudulent) is deemed ineffective as against creditors.

The creditors must convene in a preliminary hearing. If there are objections, they must be decided by the Superintendency. Any decision must be approved by the vote of creditors who represent at least 65% of the claims and must be included in a document approved by the Superintendency.

15.8 Reorganization in Bankruptcy under the OGPC

OGPC states that debtors may only be subject to reorganization in bankruptcy if they own sufficient assets or have permanent income to cover all their debts but anticipate that will be unable to timely satisfy those debts. In other words, reorganization in bankruptcy under OGPC is not applicable if there are overdue debts.

If reorganization in bankruptcy under OGPC is applicable, the debtors— and only the debtors — may ask the judge to begin the reorganization in bankruptcy process in order to reach an agreement with the creditors to pay their debts

within three years. If admissible, reorganization in bankruptcy temporarily prevents the continuation of any judicial action for collection against the debtor, which allows debtors to freely negotiate with creditors.

If an agreement is reached by a majority of creditors after the creditors' meeting, the judge must approve it. Otherwise, if the judge considers a rejection to be unfounded, he must order that the debtor reorganization plan (*concordato*) be approved according to the debtor's request.

15.9 Reorganization in Bankruptcy under the Humanitarian Law

Humanitarian Law allows the debtor to begin a court proceeding for reorganization in bankruptcy if not having complied with overdue obligations or anticipating that non-overdue obligations will not be timely satisfied.

The reorganization in bankruptcy process contemplated by the Humanitarian Law comprises a preliminary stage and a final stage.

The preliminary stage is exceptional and aims to achieve an agreement between debtor and creditors where new conditions, terms, and even reductions may be granted as provided in the Humanitarian Law. To that effect, the debtor must call creditors for a direct meeting or a mediation meeting where they will be informed of a potential

default declaration. If an agreement is reached with creditors who represent at least 51% of the claims, the parties may sign it directly or through the mediator. The agreement is binding even over dissenting creditors.

If no agreement is reached, the debtor may submit a judicial petition to begin the reorganization in bankruptcy process under the Humanitarian Law. If the petition is admitted, the judge must order suspension of the process, prohibit filing new actions against the debtor for 120 days, and must call a creditor's meeting. At that meeting, the debtor's report must be read, discussions must take place and agreements must be reached according to the aforementioned OGPC rules.

16

DISPUTE RESOLUTION

16

DISPUTE RESOLUTION

16.1 Court hierarchy

The Judicial Branch in Ecuador is organized by hierarchy. The Organic Code of the Judicial Branch (OCJB) states that the jurisdictional bodies competent to *administer justice and enforce rulings* are justices of the peace, specialized courts and tribunals, provincial courts of justice, and the National Court of Justice.

Processes in Ecuador generally include two levels, with first and second instances.

Justices of the peace and specialized courts and tribunals (such as criminal and administrative and tax litigation tribunals) usually hear cases in the first instance, except in cases of special personal jurisdiction. First-level specialized judges and tribunals have jurisdiction over the city where they are located, except for administrative and tax litigation tribunals which have jurisdiction over both the city and the district where they are located.

The second instance, which corresponds to appeal, generally involves the Provincial Courts of Justice. However, it does not apply to decisions issued by administrative and tax litigation tribunals which result from single instance proceedings. Nor does it apply to cases of special personal jurisdiction (Article 168, OCJB).

Finally, specialized divisions of the National Court of Justice hear cases where any of the parties files a motion to vacate a conviction (in criminal matters) or an appeal of cassation when these are admissible. Neither the motion to vacate nor the appeal of cassation is considered a new procedural instance or level but, rather, they are extraordinary proceedings for control of legality and judicial error. According to the National Court of Justice has jurisdiction over the whole national territory.

16.2 Enforcement of judgments

Judgments are considered automatically enforceable documents. This means that they can be enforced without further proceedings.

As a rule, the judge who hears the case in the first instance is in charge of enforcement of judgment. However, if the first instance is conducted before a Provincial Court of Justice or the National Court of Justice, enforcement of judgment is incumbent on one of the first-level judges having jurisdiction

according to the place where the respondent is domiciled.

Therefore, the parties will be required to file a petition for enforcement only if the court or tribunal that heard the case is different from the one competent for enforcement. If applicable, the petition for enforcement of a judgment must include all the requisites of a complaint, that is, designation of the judge before the petition is

filed, identification of petitioner and debtor and their domiciles, identification of the judgment that is to be enforced, and background information.

Once the petition is filed — or directly in cases where the judgment is issued by the court of enforcement —, the judge must grant the creditor five days to submit any documents to evidence the costs incurred during the process. Once the documents have been submitted, an expert must be appointed by the judge for settlement of capital, interest and costs.

When the settlement is submitted, the judge must issue a writ of execution ordering the debtor to fulfill its obligation within five days and warning that, in case of breach, enforcement will proceed.

The content of the writ of execution depends on the kind of obligation for which enforcement is requested:

1. If the obligation consists in **delivering a specific object**, the judge must command the debtor to deliver the object within five days. If the object is real estate, the judge must order the debtor to vacate the property and make it available to the creditor. However, if the object is in a judicial deposit, the judge must order the depository to deliver it.
2. If the obligation consists in **paying money or delivering generic objects**, the writ of execution must contain an order to deliver the generic goods or to deposit the value of such goods at their current commercial price.
3. If the obligation consists in **doing something, including execution of a contract** and such action is possible, the writ of execution must order the action to be carried out. If the obligation is not fulfilled, the creditor may appoint a third party to perform the obligation at the debtor's expense.
4. If the obligation consists in **abstaining from**

doing something and the action has already been carried out, the judge must order the debtor to undo what has been done within a given timeframe.

The debtor may only oppose the writ of execution by arguing and demonstrating that:

1. The obligation has been fulfilled;
2. A transaction with the creditor has been reached;
3. The creditor has forgiven the debt;
4. The debt has been novated;
5. The position of debtor and creditor is held by them at the same time;
6. The obligations have been offset; or
7. The object that is to be delivered has been lost or destroyed due to an act of God.

All grounds for opposition must have occurred after the judgment became enforceable. However, opposition does not suspend enforcement of the judgment.

Therefore, if the writ of execution is not complied with, the judge must order its publication on the Judiciary's webpage in order to let any interested third party know that the debtor is in default.

The enforcement method depends on the type of obligation the petitioner is seeking to enforce.

1. **Obligation to deliver a specific object.** If the writ of execution is not complied with, the judge may order the National Police intervention. However, if fulfillment of the obligation is legally or materially impossible and the creditor agrees, the judge may order the debtor to pay the creditor the price of the object.
2. **Obligation to pay money or deliver generic objects.** If the debtor does not comply with

the writ of execution, the judge must order seizure of property up to an amount to cover the debt.

3. Obligation to do something. If the action was performed by a third party appointed by the creditor, the judge must command the debtor to compensate the creditor for the expenses incurred. If for any reason the action required to be done is not done, the judge must determine the amount of the compensation that the debtor must pay for the breach, which must be collected as if the obligation were monetary. In any case, if the debtor does not pay the amount within a given timeframe, the judge must order seizure of the debtor's assets. On the other hand, if the obligation consists in executing a contract and the debtor does not abide, the judge must execute it on behalf of the debtor. If contract execution has become impossible, the judge must determine the amount of compensation that the debtor must pay for the breach, which must be collected as if the obligation were monetary.

4. Obligation to abstain from doing something. If the debtor does not comply with the writ of execution, the creditor must undo what has been done at the expense of the debtor. However, if this is not possible, the judge must order the debtor to pay compensation to the creditor.

Before seizure is executed, the debtor may submit a payment proposal. The debtor must include a guarantee to secure fulfillment of the obligation if a term is granted, unless the creditor does not request it. If the payment proposal is not rejected by the creditor or by any interested third party,

the judge must cancel the seizure or may order seizure of other goods to secure fulfillment of the payment proposal.

If the debtor does not submit a payment proposal or if the proposal is not accepted by the creditor or by any other party, the judge will order seizure of the debtor's assets, which must be valued by a court-appointed expert. After the seizure, the seized goods must be delivered to a depository and the seizure must be registered.

Afterwards, the judge must deliver the expert report to the parties and call the parties and the expert to a hearing within the next 15 days.

At the hearing, the judge must decide on any opposition raised by the debtor, on any payment proposal, on any party's observation about valuation of the goods, and on any right invoked by a third party. Besides, the judge must designate which of the seized goods will be auctioned. Any third party may submit a proposal for acquisition of the seized goods which may only be considered if the third party delivers a guarantee and if the offered price is higher than the price that could be obtained at auction. If there is no such offer, the judge must set a date for an electronic auction and order publication of pictures and value of the goods to be auctioned.

Once the goods are auctioned, the amounts paid for them must be delivered to the creditor to cover the value of his claim plus interest, compensation and costs. Nonetheless, if the seized goods consist of cash or of the specific good or generic goods owed to the creditor, they must be delivered directly to the creditor without need for an auction.

16.3 Alternative dispute resolution processes

Alternative dispute resolution processes such as arbitration and mediation are recognized in the Constitution. These processes apply to matters in which settlements can be reached. The new Organic Law for Economic Development and Fiscal Sustainability established that mediation may be applied to tax matters, which was previously prohibited.

16.3.1 Arbitration

Spanish is the language for domestic arbitration procedures in Ecuador. Arbitration can be *ad hoc* where the parties agree on the rules for the proceedings, or may be administered by an arbitration center where the parties are subject to the center's rules. The parties may also agree on whether the arbitral award must be issued at law or in equity. If there is no agreement, arbitration in equity prevails. Additionally, the parties may agree on whether the arbitration proceedings will be confidential and where they will be conducted. Finally, it is important to mention that the OGPC is applicable to all matters not regulated by the AML, and that arbitration proceedings will be subject to the center's rules and to the arbitration agreement.

To submit a dispute to arbitration, the parties must have agreed to submit their present/future and contractual/non-contractual disputes to this dispute resolution method. The agreement to arbitration may also be included in an exchange of written communications between the parties.

Whenever the parties to a dispute before an ordinary court allege the existence of an arbitration agreement, the ordinary judge must refrain from deciding on the competence of the arbitral tribunal and, therefore, must defer such decision to the arbitral tribunal. However, if this

argument is not raised, it is understood that the right to submit the dispute to arbitration has been waived.

Arbitration is initiated through a claim instead of a notification. If arbitration is administered, the claim must be filed with the director of the center; otherwise, with independent arbitrators. In a memorial, the claimant must enclose the instrument that contains the arbitration agreement and any evidence that supports the claim.

Once the claim is properly filed, the director of the center or the arbitrators must formally admit it and order service of process on the respondent within five days of examination of the claim to determine whether it meets filing requirements.

After the respondent has been summoned, ten days are allowed to respond to the claim. The respondent must include any evidence that supports his defenses in a memorial. If the respondent does not submit a memorial, this is understood as pure and simple rejection of the claim. Furthermore, if the respondent does not appear for the proceedings, arbitration nonetheless will continue. The respondent may also file a counterclaim against the claimant, but only if the counterclaim is related to the subject matter of the arbitration and covered by the arbitral agreement. If this is the case, the claimant has ten days to respond to the counterclaim.

The claimant and the respondent may modify their memorials within five days after submission and the other party may respond to such modifications within three days.

Subsequently, the director of the center or the independent arbitrators (depending on the case) must call the parties to a mediation hearing in order to reach a consensus between them. Mediation must be conducted by a mediator

appointed by the director of the center or the independent tribunal. The partial/total mediation agreement constitutes enforceable judgment.

In case of partial mediation, the parties must appoint principal and alternate members of the arbitral tribunal, whether a sole arbitrator or a three-person tribunal. In case of disagreement, the arbitrators will be randomly selected. The arbitrators must accept or reject their appointment within three days of being notified. Once their appointment is accepted, the arbitrators must take office and appoint a chairman (from among the members of the arbitral tribunal) and a secretary.

Once the arbitral tribunal is constituted, it must call a preliminary hearing to rule on its own jurisdiction where the arbitral agreement must be read. If it rules in favor of its own jurisdiction, the parties must set forth their claims and defenses, and a procedural timetable for the taking of evidence must be set. After the date of the preliminary hearing, the arbitral tribunal has 150 days to issue the arbitral award; this period may be extended by up to another 150 days by agreement between the parties or by the arbitral tribunal.

If the arbitral tribunal deems it necessary, it can request further evidence or steps to clarify the facts.

Once all the evidence has been submitted, the parties may ask the arbitral tribunal to set a date for a new hearing to present their arguments.

Afterwards, the arbitral award must be issued by majority vote and signed by all the arbitrators. If one of the arbitrators does not agree with the majority's opinion, he can note the dissenting opinion. Subsequently, the arbitral tribunal will call a hearing where the arbitral award will be read and delivered to the parties. The arbitral award is final, notwithstanding the possibility to request its clarification or extension within three days after issuance and the parties' right to seek annulment

on specific grounds before the President of the Provincial Court of Justice within ten days from the date when the arbitral award became enforceable.

International arbitration is regulated by treaties, conventions, protocols and agreements signed and ratified by Ecuador instead of the above rules.

Enforcement of foreign awards has proved difficult and complex due to confusions and contradictions in the law about the need or not to follow the homologation procedure for foreign awards.

16.2. Mediation

Mediation is defined by Article 43 of the AML as a dispute resolution process whereby the parties seek a voluntary agreement on matters that can be settled with the assistance of a neutral mediator. Mediation is confidential but the parties may mutually agree to waive confidentiality.

The mediation process begins when a written request for mediation is addressed to a mediation center or an authorized independent mediator. Mediation can proceed when: (i) the parties have agreed to submit their disputes to mediation; (ii) one or both parties have requested it; or (iii) an ordinary judge orders a mediation hearing at a mediation center and the parties have agreed to it.

As in the case of arbitration, if the parties agree in writing to submit their disputes to mediation but this fact is not raised when a lawsuit is filed in connection with a matter contemplated by the agreement, it will be understood as waiver of the right to submit the dispute to mediation.

Once the request for mediation is submitted, the mediator must call the parties to a hearing. If any of the parties fails to appear, a new hearing must be called. If any of the parties fails to appear for a second time, the mediator must issue a document

stating that mediation was not possible.

Mediation terminates when a document is signed stating that mediation was not possible (if a party fails to attend the hearing) or the impossibility of reaching an agreement (if no agreement is reached) or a partial/total mediation agreement. This document must be signed by the mediator.

The agreement reached through mediation is final to resolve the dispute or part of it. Therefore, the mediation agreement is enforceable, has *res judicata* effects and may be enforced as a final ruling through the enforcement procedure explained above .

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